United States Court of Appeals

for the Second Circuit

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

74-1611

REA EXPRESS, INC. Petitioner, v. CIVIL AERONAUTICS BOARD Respondent.	Docket No. 74-1611

UNITED STATES COURT OF APPEALS
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familiar with this investigation. I indicated that I was and he asked if I understood it. I said I did, and that I was very interested in the outcome of this investigation and that I would like to participate.

Q What do you understand the investigation is about?

A It is the continuation of Air Express as an express company is my understanding.

Q Is your greater interest in the continuation of Air Express as a service or in the continuation of REA as a company which happens to be the one rendering that service at the moment?

A It is in the continuation of that service that we have been experiencing.

MR. MATHEWS: I don't think that answer is clear, "that we have been experiencing." He has been experiencing the REA service.

EXAMINER KEITH: You can pick this up on redirect, Mr. Mathews.

BY MR. RYAN:

Q In other words, Mr. Miltenis, if it were a different company providng this service, as long as you got the service you would be happy, wouldn't you?

A I think I would be.

Q On page 26 of your testimony you say that one of the most valuable of REA air express' services to you is its

extensive geographic coverage under single-line responsibility. Do yuo know how many points are served by REA air express?

A Well, I can say that we have to ship to any city that has a population over 1000 in the United States from one time or another, and REA's extensive coverage usually meets these demands.

Q By usually, do you mean that sometimes it doesn't?

A I don't know of any case where it did not. It did not come to my attention.

Q Do you have an REA employee stationed on the premises of Western Electric Company?

A No.

Q Do you use REA's facility for tracing of shipments?

A Yes, along with all other airlines and air freight forwarders.

MR. RYAN: Now, if the Examiner will allow me a question slightly off the direct.

BY MR. RYAN:

Q Isn't it correct that you have free telephone service anyplace in the country?

A Free?

Q Yes.

A No, sir. We have a corporation network that we pay for.

MR. RYAN: That is all. Thank you.

EXAMINER KEITH: Mr. Meiser?

BY MR. MEISER:

Q Could you give us a breakdown of the traffic that you report in the third paragraph of your testimony; that is, the percent of those shipments by surface, or are those all air shipments, 200,000?

A Do I turn to some reference here?

Q Third paragraph, page 25.

A Well, approximately 5 percent of all our total shipments by all modes, air, surface and rail, are made in air express service.

Q While that represents what, approximately 2.7 million in revenue, what number of shipments is that?

A That is approximately 200,000 shipments annually.

Q So the 200,000 that you referred to in the first line of that paragraph are solely by air express?

A Yes, sir.

Q And you also utilized air freight service?

A Yes, sir. As an example, I do have an accumulated figure, but we use all other modes of air transportation and we made 95,000 shipments by those modes. That would be air freight forwarders. And we used -- we made 269,000 shipments by air parcel post.

Q Now, in the fifth paragraph, the paragraph on that same page beginning "Over the years," in the second sentence

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you state that no other air priority service appears to be capable of furnishing comparable dependability. To what other service were you comparing REA in that -- when you made that statement?

A This was air freight forwarders and also air freight, to some extent. We have approximately fifty expediters in the country and we query them from time to time as to the experiences via all modes of transportation, not only air, but all sorts of surface transportation as well.

Q Is your understanding, then, that air freight services are accorded the same priority as air express? You would class them all together?

A As air freight? No, sir.

Q What do you mean, then, by the phrase "other air priority service"?

A Well, as an example, an air freight forwarder might lease or reserve some space on a flight and we expect to get our freight on there and our experience has been that they were overbooked, it could not get on that flight, and let's say they had to wait for another flight. That might have delayed it a number of hours or another day. I considered that sort of a priority where we were counting on the air freight forwarder to come through with that leased space from the airline and they could not.

Q Could not the reason for that space not being

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available be the fact that there are other classes of traffic that have a higher priority that would affect the traffic?

A Well, in this case it was records. I think RCA was shipping records, and they had to get on, and they were going air freight. So I don't know what the priority of air freight against the leased space was.

Q With respect to the last paragraph on that page, have you ever asked an air freight forwarder to arrange for on guard protective service?

A No, sir. Do you want to know why?

Q No. That is sufficient.

A There is a definite reason why. I would like to clarify it.

MR. MATHEWS: Complete your answer.

THE WITNESS: Our security department investigated air freight forwarders, air freight, and REA air express security measures, and it was in their opinion that REA air express offered the best security of all the airlines offering that service.

EXAMINER KEITH: I think you mean carriers; is that right?

THE WITNESS: Yes, individual airline carriers, yes.

BY MR. MEISER:

Q I am not sure that answers my question. Did you consider in your evaluation --

A Yes, we did, but we had to get it cleared through our security department and it is their opinion that we should stay or use the services of air express for these types of shipments.

Q Do you have a breakdown of the extent to which you use REA's pickup and delivery service as opposed to "hold at airport" or delivered to the airport?

A Yes. It does vary from city to city. As an example, where we had a manufacturing location, they will have on the average of two pickups a day, one in the afternoon or early morning and one in the afternoon. At other locations there would be possibly only one pickup going directly to the airport. The same applies on the delivery.

Q So this traffic is primarily between major manufacturing facilities -- originates at a major manufacturing facility where there is a regular pickup service?

A No, sir. We deal with approximately 400,000 suppliers, and on any given day I would say that we have a preponderance of shipments coming from them to us which could be any city in the United States, going to any one of our twenty-two manufacturing locations. Also, our manufacturing locations would be originating shipments to our installers located again in populated cities of 1000 or more.

Q My question was do you have a breakdown --

EXAMINER KEITH: Where does that appear in the

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exhibit, Mr. Meiser? Are you referring to a breakdown of the shipments?

MR. MEISER: The witness testified that, for example, he expects -- he has come to depend on REA air express service and intends to use it in the future. I am merely trying to define the extent of the service that he is in fact using.

EXAMINER KEITH: The witness has testified that 5 percent of their total air freight moves via REA.

Is that right?

THE WITNESS: Five percent of our total shipments by all modes.

EXAMINER KEITH: By all modes.

BY MR. MEISER:

Q My question, then, is what percent of that 5 percent receives pickup and delivery service by REA?

A Okay. I guess you are going to the question about "hold at airport."

Q That's right.

A In certain cities, as an example, where we need weekend pickup, JFK as an example, we will have our installers we would have the shipments held at airport for pickup over the weekend and, percentage-wise, I couldn't rightly say, but it would be a small percentage.

Q But there are other instances besides JFK where you

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hold at airport?

A Yes. In remote spots of the country where we need weekend or have late pickup, where it is critical to a job, national disaster or hurricane, and we have an out-of-service condition, we would then generally hold at airport.

MR. MEISER: That is all I have. Thank you.

EXAMINER KEITH: Mr. Hardman?

MR. HARDMAN: Yes, sir.

BY MR. HARDMAN:

Q Sir, I am not clear about the 200,000 shipments in air express. Now, are these all outbound shipments from various of your installations around the country or does that figure include inbound shipments?

A It includes outbound and inbound both.

Q Now, in the case of the inbound shipments, these would not necessarily be routed by someone in your company, right?

A As far as outbound?

Q No, as far as inbound.

A Yes, we specify on purchase orders, as an example, what mode we would desire to supply it to use, and we would specify air express.

Q I see.

A Or any other type.

Q Okay. I notice that the 200,000 shipments, in

generating the somewhat over $2 million, almost $3 million in revenue for REA, then most of your shipments move at or pretty close to the minimum charge.

A Very true.

Q All right. Are these mostly telephones that you ship in boxes?

A They are not mostly anything. They are everything.

MR. HARDMAN: Okay. Fine. Thank you.

EXAMINER KEITH: Bureau counsel?

MR. GIFFIN: Just one question.

BY MR. GIFFIN:

Q With respect to your use of the services of air express, air freight and air parcel post, what criteria do you use to choose between those services for an individual package ?

A Two criteria. Number one, we establish our routing based on cost and then on service, service that is needed for that particular shipment, and if it appears, for instance, normally to be more economical to use air parcel post and we want to insure delivery, we might pay a few dollars more in the next category to use air express, as an example, even though air parcel post might be more economical for a two-pound shipment, in order to insure delivery we would go to the next service that was available that would guarantee or come close to meeting our needs.

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Q Now, when you say insure delivery, do you mean in terms of time?

A In time, yes. It might have a next day delivery and we would look to that service that could perform -- that carrier that could perform that service. It is cost and service at any one time.

MR. GIFFIN: Thank you.

EXAMINER KEITH: Do you have any redirect?

MR. MATHEWS: Just one point for clarification.

XXXX
XXXX

REDIRECT EXAMINATION

BY MR. MATHEWS:

Q Mr. Ryan was asking you, Mr. Miltenis, whether it was the express service that you were interested in or the express service by REA that you were interested in. It is a fact, is it not, that REA provides the air express service now?

A That's correct.

Q Are there any aspects of REA's air express service that cause you to find that service preferable to the services that the forwarders could now provide?

A Yes, there are a number of reasons that we have experienced. As an example, single-line coverage from origin to destination, single reference to an airbill number which helps in following the shipment or tracing it at a later date. Again, the wide geographical coverage that we could expect and also the service we have been getting at the present time.

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Q Based on your experience and considering those factors, do you believe that any freight forwarder that obtained air express rights could perform as effectively --

MR. RYAN: Objection.

EXAMINER KEITH: I sustain the objection.

MR. MATHEWS: I was just trying to clarify --

EXAMINER KEITH: I think it is clear, Mr. Mathews.

BY MR. MATHEWS:

Q Do you believe there is any other operator who could provide air express service that would satisfy your needs as REA now does?

MR. RYAN: Objection.

MR. MATHEWS: He has had long experience in this business, Mr. Examiner. I am asking him --

MR. RYAN: Mr. Examiner, if you want, and if you allow this question, I will recross and place all the premises as to what the possible varieties of proposals which have been expressed in this case are.

EXAMINER KEITH: This is the thing that I fear, Mr. Mathews, that we can go into a lot of things, whether this witness has considered this, that and the other in making such an appraisal. I think the question of fitness is more than just a shipper's preference and I just don't believe this would be too probative.

MR. MATHEWS: All right. I have nothing further,

then.

EXAMINER KEITH: Any further questions of this witness?

(No response.)

Thank you. You may be excused.

end7 (Witness excused.)

MR. MATHEWS: Call Mr. MaGee, please.

Whereupon,

GLEN D. MA GEE

was called as a witness on behalf of REA Express and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MATHEWS:

Q Mr. MaGee, would you state your name and position for the Reporter, please.

A I am Glen Dave MaGee from Waurika, Oklahoma. I am an employee of the Public Service Company of Oklahoma, a public-owned utility. I am a District Manager for the Waurika District. I have lived there 20 years, currently am President of the Waurika Chamber of Commerce.

Q Directing your attention to page 24 of REA's Exhibit 354, I believe that is before you, which bears your name at the top, do you adopt that statement as your testimony in this proceeding?

A What page was that, sir?

Q Page 24 of REA-354.

A Yes, sir.

Q Do you have any corrections that you wish to make, Mr. MaGee?

A No, sir.

MR. MATHEWS: The witness is available.

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EXAMINER KEITH: Mr. Meiser?

CROSS-EXAMINATION

BY MR. MEISER:

Q I am sorry, I didn't get your position, other than with the Chamber of Commerce.

A I am a District Manager of a public utility, Public Service Company of Oklahoma.

Q Is there an airport at Waurika?

A No, sir.

Q Where is the nearest --

EXAMINER KEITH: Mr. Meiser, we have had that from another witness. This witness -- I suggest you confine yourself a little closer to his testimony, here.

MR. MEISER: Well --

EXAMINER KEITH: I believe we had a witness earlier to state that there is no airport there and that shipments are made out of Dallas, I believe.

MR. MEISER: I don't recall that.

EXAMINER KEITH: Well, I do. As I recall, this matter came up, and a previous witness testified that the birds that move in air express do not move out of Waurika, but move out of Dallas by airfreight and then are distributed by air express at New York.

Is that generally what I understand the testimony to be?

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MR. MATHEWS: That is my recollection, Mr. Examiner.

EXAMINER KEITH: So I just suggest you confine yourself to this witness' testimony.

MR. MEISER: Did you say someone has testified to that?

EXAMINER KEITH: Previously testified.

MR. MATHEWS: Counsel reminds me, I think I misstated. I don't think it was testimony I had in mind, I think it was a statement of counsel with respect to that pattern of traffic movement. I don't wish to leave an erroneous impression in the record.

There will be testimony by Mr. John Wilson, who can speak to that same point, if you wish, Mr. Examiner.

EXAMINER KEITH: I suppose in view of that that Mr. Meiser is entitled to ask you if there is an airport in the area, and your answer is no, is that correct?

THE WITNESS: Sir, not in the area. I understand him to say Waurika.

EXAMINER KEITH: Oh, in Waurika.

BY MR. MEISER:

Q. My basic question is, through what airport does this traffic move?

A Sir, would you speak a little louder, please?

Q Through what airport does this traffic move?

A It is my understanding that it is shipped out of

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Oklahoma City -- no, they are hauled by car or truck to Oklahoma City and shipped by air.

Q And who hauls, makes the haul, to Oklahoma City?

A Generally speaking a gentleman by the name of Mr. Kay Scott.

Q Is he an employee of REA?

A Not that I know of, sir.

Q Do you know who does employ him?

A To my knowledge, he is self-employed. He is an older man than I am, and being in the bird business the 20 years that I have been in Waurika and I think I can safely say, possibly ten years before that.

Q Would you say that he is in effect in the local trucking business?

A No, sir, he is not in the trucking business. He has a station wagon. To my knowledge, maybe he has a pickup.

Q But he does provide the service and then charges these people.

A He does, he raises birds, buys birds, and he takes them to Oklahoma City to ship by air.

MR. MEISER: Thank you, that is all I have.

EXAMINER KEITH: Mr. Ryan?

BY MR. RYAN:

Q Very briefly, Mr. MaGee, this gentleman you were describing, I gather is a bird buyer and he goes around to

the raisers and feels the birds, if they are alive, he buys them --

A He is a bird raiser, correct?

Q I take it that no bird raiser in Waurika himself uses REA's services, is that right?

A Please state that question again, sir.

Q Do any of the bird raisers in Waurika have any negotiations with REA at all about shipments?

A I am sure, if I recall correctly, they are shipped from Oklahoma City to an allied American market.

Does that answer the question?

Q No.

My question is whether anybody you know who lives in Waurika and raises birds has any dealings with REA directly?

A Sir, as I have told you, the business I am in, this is completely out of my field. I feel a little hesitant to say something I am not sure of.

My interest is in my people in Waurika who are my friends and it is my duty to do anything that will help them. And I think they need some help.

Q Yes, sir. And an answer of I don't know is a perfectly good answer in this hearing.

A Thank you, sir.

Q Now, in your written testimony, you say that the

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termination of REA Air Express would bring about many hardships.

Would you agree with me that what you really mean to say is that the termination of service -- no matter who provides it -- would bring about hardships?

A Termination of service, yes, sir.

Q It doesn't make any difference whether it is REA who provides it or somebody else, isn't that right?

A There again, sir, don't push me too far in something that I am really not qualified to speak.

Now, when you get -- you know what REA means to me? It means Rural Electrification Act. That is how wide and how varied my thinking has to be.

You kind of have me on the spot. Don't make me say something I don't want to say.

MR. RYAN: Mr. MaGee, I would not think of making you say another word.

Thank you very much.

EXAMINER KEITH: Mr. Hardman?

BY MR. HARDMAN:

Q Mr. MaGee, I was wondering, did you originally prepare a statement for use in the embargo case about a year and a half ago when the service was threatened to be cut off, air express service?

A Sir, I'm going to have to go back and say that I am reluctant to answer, because I'm not sure. I am not really

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aware of all of the transportation, ground or air, so on and so forth.

Q Let me rephrase it.

Did you originally prepare a statement similar to this or like this about a year and a half ago?

A Yes, sir, I think that is true. I think that is true.

In fact, I am almost sure it is. I would have to go back to the Chamber files, but I feel that is true.

Q And it was pretty similar to your testimony in this case?

A Yes, sir.

Q And the considerations that prompted you to give the statement in both cases are about the same, is that correct?

A I would say -- if I recall correctly, the problem was approximately the same. I think this time maybe more or less it is a little more involved, a little more to the point that maybe we should do something to improve, expedite the potential of the bird market, all over the world.

I feel that maybe we are not -- I see we are not, our Chamber -- is not doing all we could for many of our people that have to supplement their livelihood down there by raising birds. I am speaking of widows, and people that have been retired, and the cost of living almost demands that they

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do something. This thing seems to be very, very satisfying to them, raising these parakeets.

Does that answer your question, sir?

MR. HARDMAN: I think so, sir.

Thank you very much.

MR. GIFFIN: I have no questions.

MR. MATHEWS: No redirect.

EXAMINER KEITH: Thank you, Mr. MaGee, you may be excused.

(Witness MaGee excused.)

EXAMINER KEITH: I will receive in evidence page 24 of REA-354 and I will also receive page 5 and 26 of REA-354.

(The pages referred to, page 24 of REA-354 and pages 5 and 26 of REA-354 were received in evidence.)

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MR. MATHEWS: I call Mr. Lane, please?

MR. RYAN: I understodo Mr. Waid was going first.

MR. MATHEWS: Did I say Waid before Lane?

All right, I will call Mr. Waid.

Whereupon,

PRYOR WAID

was called as a witness on behalf of REA Express, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

XXXX BY MR. MATHEWS:

Q Would you give your full name and state your position for the reporter, please, Mr. Waid?

A. Pryor Waid. I am Executive Vice President of the Farmers' National Bank in Waurika, Oklahoma. I live in Waurika, Oklahoma.

Q Do you have a volume in front of you of REA's exhibits, containing Exhibit REA-354?

I refer you to page 34.

A. Certainly.

Q Do you adopt that --

A. I haven't found page 34, as yet.

Q I am sorry.

A. Yes, I have it.

Q Do you adopt that statement as your testimony in

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this proceeding?

A. Yes, I do.

Q. Just one question. Mr. Waid, I am handing you a copy of Exhibit EAF-R-T-5, Emery Air Freight.

Direct your attention to pages 2 and 3 thereof, in which Mr. James J. Doyle, testifying for Emery, discusses Waurika.

He says that he examined a copy of a telephone book, could find no bird breeders indicated therein, nor apparent outlets for birds.

Further, it contains a sentence that in effect says that he could not locate the Farmers' National Bank.

Have you any comment?

A. I am afraid you don't have enough time for me to finish this. Just one second, please.

I don't know the gentleman that prepared this, but without trying to be too derogatory, he either is incompetent, or blind, one.

The Farmers' National Bank has been in existence in Waurika since 1906. I am the third generation of the Waid family to be in that bank, and if the gentleman that prepared this was at Mr. Burger's place, W. C. Burger, Farm and Ranch, he was within two blocks of our bank, which has the largest sign in Waurika, located on the same street Main Street.

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We are listed in the phone directory -- I notice here he says we are not listed in the phone directory. We have a regular listing, of which my nine-year old son could find in two minutes. And we are also listed twice in the yellow pages.

We regularly advertise in the newspaper and on television. We sponsored a regular show.

So, if we are not there, he is the only one I think, that doesn't know it.

Mr. Burger is also a customer of our bank. Our checks are in ample supply in his place, or he could go into either business in either side of Mr. Burger's, and he would have found that they are customers of Farmers' National Bank. We are there.

Q What about the statement, he could not locate any bird breeders or outlets for birds?

A Well, now this I can somewhat understand.

Usually -- I think most people talk about bird breeders -- maybe we think about big business. But this is not the case in Waurika at all. These bird breeders in Waurika are just individual people that have a medium income way below the national average, and even our state average, a medium income of some, we will say $3,000 per year.

This will probably surprise some of the people here. These people don't advertise, "I am a bird breeder."

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Most of these breeders are people that have from 100 pair of working birds, to as many as, maybe 500 or 600 pair. They raise these on their own property. They don't have business signs. They are not corporations. They are just individuals that are supplementing their income.

And also, in many cases, as Mr. Magee brought out, widows that rely on the bird business as their whole means of support.

MR. MATHEWS: I have no further questions, Mr. Examiner.

The witness is available.

EXAMINER KEITH: Mr. Ryan?

CROSS-EXAMINATION

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BY MR. RYAN:

Q You havein front of you this testimony of Mr. Doyle, I take it?

A. Mr. Doyle, yes.

Q. Now, would you tell me, and point out for me in there, exactly where you think he said that he could not find your bank, or a phone directory listing for it?

A. If I can find it again, here. I haven't read all this. I may have to piece it.

Right here he is talking about the Farmers' National Bank, on page 3 of his testimony.

"If Farmers' National Bank made loans to bird

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* * *

A I am sorry, this was done some time ago.

Q Could you tell me if 80 percent of it was REA's language that was sent to you, 90 percent?

A Probably 80 percent to 90 percent.

Q Eighty percent of this testimony was written by somebody at REA; right?

A Right.

MR. RYAN: Okay. Thank you.

EXAMINER KEITH: Bureau counsel?

BY MR. GIFFIN:

Q Can you tell me the nature of the commodities that you ship via REA versus those that you ship via air freight forwarding?

A Okay. There are two types that we ship with REA that we don't with the other carriers. One type is packaged in dry ice, and it must be delivered in three day swith no exceptions. The reason for this is that the chemical will decompose or become impure. The other type is a chemical that has a very short half-life as far as radioactivity is concerned. A half-life would bell hours, 24 hours, something like that. Here again we can't afford more than three days in the delivery. One day is preferable, but three days is the maximum.

Q What rate do you ship these compounds under through REA? Is this a specific commodity rate or is it under their

TESTIMONY OF MR. MOORE, REA

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Q You say that in 1970 you had 700 shipments via REA; is that correct?

A Yes, sir.

Q Can you say how many shipments went via air freight forwarders or direct air freight?

A Numerically, no, sir, I couldn't.

Q Could you give a percentage?

A Yes, sir. Probably 90 percent of all of our shipments go REA. Maybe 7 percent forwarders, 3 percent probably airlines.

MR. GIFFIN: Thank you.

EXAMINER KEITH: Mr. Bernhard?

MR. BERNHARD: No.

EXAMINER KEITH: Mr. Mathews?

MR. MATHEWS: Yes, sir.

REDIRECT EXAMINATION

BY MR. MATHEWS:

Q Just so I understand you clearly, Mr. Moore, do I understand that with the exception of that one instance of the Richmond Hospital you mentioned, in all other instances or virtually all other instances, if the consignee doesn't specify otherwise, you use REA?

A Yes, sir.

Q You said that was, I believe, partly due to the relative rate structure. Are there other reasons?

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Q Special handling then is another consideration?

A Right, that is correct.

Q I take it geographical coverage is a third --

MR. RYAN: Objection, Mr. Examiner, the witness hasn't said this at all.

MR. MATHEWS: Is geographical coverage --

EXAMINER KEITH: Mr. Mathews, you are going to have to be a little more careful about suggesting answers to the witness on direct.

THE WITNESS: We ship throughout the United States.

MR. MATHEWS: That is all I have.

EXAMINER KEITH: Thank you, Mr. Benson.

(Witness Benson excused.)

EXAMINER KEITH: Call your next witness, Mr. Mathews.

MR. MATHEWS: Call Mr. Scott, please.

May we receive Mr. Benson's exhibits?

EXAMINER KEITH: Receive in evidence page 11 of REA-354.

(The page referred to, page 11 of REA-354, was received in evidence.)

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Whereupon,

PHILLIP R. SCOTT

was called as a witness on behalf of REA Express and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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BY MR. MATHEWS:

Q Mr. Scott, will you please give your name and official position to the Reporter?

A My name is Phillip R. Scott; I am Assistant District Attorney for Jefferson County, State of Oklahoma, the Fifth District Attorney's District.

Q Would you turn, please, to pages 32 and 33 of REA-354?

A I am there, sir.

Q Does this statement that appears under your name on those two pages represent your own personal view and do you adopt it as your testimony in this case?

A That is my view, and I do adopt it.

MR. MATHEWS: The witness is available.

MR. RYAN: Mr. Examiner, I move to strike all of this testimony except the last paragraph, as immaterial to this proceeding.

MR. HARDMAN: I join in that, Mr. Examiner.

MR. MATHEWS: This material relates to the important to this community of a type of enterprise which REA is a material element in, in the transportation of it. There

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will be testimony by Mr. John Wilson to the effect that the birds that are raised in this area move through part of their transportation process in the United States by air express.

I think it is entirely relevant.

EXAMINER KEITH: I am going to let it come in, Mr. Ryan. I question the materiality, but I can see a bearing, as Mr. Mathews suggests.

On that basis, I am going to let it come in.

THE WITNESS: Mr. Examiner, I think I can clarify a few things --

MR. RYAN: Objection, the witness should not comment directly unless he has been asked a question.

EXAMINER KEITH: Just a moment, counsel.

BY MR. MATHEWS:

Q Do you have anything to add to your testimony, Mr. Scott?

A I certainly do.

EXAMINER KEITH: No, I don't think so, because this was circulated and under our rules, Mr. Scott, I'll wait and perhaps we'll see if there are any questions.

Mr. Ryan, did you want to cross-examine Mr. Scott?

CROSS-EXAMINATION

BY MR. RYAN:

Q Very briefly, Mr. Scott. There was some testimony that in this proceeding, which perhaps you have heard, that a

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Mr. Scott went around and picked up the birds in Waurika.

Are you that Mr. Scott?

A I am not. That is my father, C. L. Scott. The other gentleman they were talking about is Gary Scott, who happens to be my brother.

In order to clarify the reasons I am here, I am here --

Q Excuse me, I have not asked you to clarify the reasons.

MR. MATHEWS: Let the witness answer the question.

EXAMINER KEITH: Now, wait a minute, Mr. Mathews.

The witness is an attorney, and I'll have to caution him that he is here to answer questions. I can appreciate his desire to get his remarks in, and maybe at the proper openin you can, but not at this point.

Go ahead.

BY MR. RYAN:

Q My only question, Mr. Scott, which I believe you have answered, is that the Mr. Scott who picks up the birds in Waurika is your father, is that right?

A My father does not pick up the birds, no.

Q I am sorry.

A They are brought to him.

MR. RYAN: Fine. No further questions, thank you very much.

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NOVO tariff. But now that you have had a chance to evaluate the two services overall, how would you compare the two services?

A I think that NOVO offers our type of customer, because of the type of commodity and the fact that it is useless if it is delayed, a better service because of tracing than air express had offered.

MR. MEISER: That is all, thank you.

EXAMINER KEITH: Mr. Ryan?

BY MR. RYAN:

Q Your last question on direct examination was, I believe, whether you see a need for continuation of air express service by REA and you answered yes. Is your interest a continuation of good service, regardless of what company provides it?

A That is correct.

MR. RYAN: Thank you.

EXAMINER KEITH: Mr. Hardman?

BY MR. HARDMAN:

Q Sir, are these shipments small enough so they can be shipped by air parcel post or UPS Company, United Parcel Service?

A Yes.

MR. HARDMAN: Thank you.

EXAMINER KEITH: Any further questions?

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several. Are these five shippers whom you chose to conduct this experiment all regular air express customers?

A I think so, to a greater or lesser degree. Two of them, at least, are regular customers. One is just for surface traffic, to the best of my knowledge.

Q Isn't it a fact that Western Electric is probably your third biggest shipper in volume in the world?

A It is one of our larger customers, yes. Not based on its volume from New York City, but as a corporation, yes, it is a good-sized company.

Q Would you agree with me they probably ship in excess of 250,000 shipments a year on REA Air Express?

A I couldn't agree to that, without looking into it, sir.

Q Now, you made a statement which puzzled me, in answer to a question by Mr. Meiser. He asked you if you had selected these five gentlemen to conduct the experiment, and you paused and said, "Well, it was Mr. Kerrigan's decision."

Should I have read something into that that I didn't hear?

A Well, the reason for that statement is very simple. As I'm sure you realize, it is not quite as easy as deciding or selecting shippers to participate in a study like this, and then to go to them and say, "you are it, this is what we want you to do."

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As a practical matter, you have perhaps two or three candidates, perhaps two or three occur to you at each point. They may be suggested by local people who call on them and feel that they would cooperate, and you make your selection from them.

In some cases, from a slate of one.

Q Now, would you recast your answer not in terms of what you might do, but what you, in fact, did?

A That is, substantially, what we did.

Q Okay.

Who suggested what people and how did these five get chosen?

A To the best of my knowledge, Mr. Kerrigan came up with Western Electric and Spiegel. I believe our regional sales manager in Atlanta suggested W. R. Bean, and I believe that this was true in the case of Texas Instruments, suggested by our regional sales manager in the Southwest, and true for Max Factor, in Los Angeles.

Q Now, did any corresponding to these gentlemen outlining what you wanted and how it was to be done?

A Yes. Of course, the initial contact described in a very general way what the cooperating shipper would be asked to do.

Then a letter was handed to each of the shippers at the time one of us from New York called on the shipper to

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A A number of steps. The most dramatic short-term steps were a significant cutback to the extent of over 10 percent in our so-called staff operations, that is, the overhead kind of personnel, industrial relations, finance, marketing department, that type of thing, reductions in the salaries of most individuals -- I should say all individuals in the upper management echelon and most individuals in the middle management echelon, a very belt-tightening look at our labor situation in the field in terms of extremely tight control over that labor to keep it at a very minimum.

We have proceeded and accelerated our consolidation programs, that is, the pulling together of various terminals into one single terminal in geographic areas approximately fifty miles in diameter. In this case we are actually reducing the fixed portion of our expense by the reduction in the number of terminals and a reduction in the number of supervisory personnel but still serving these communities via direct delivery out of the centralized terminal.

In other areas we have in Chicago right now a consulting firm assisting us in the modification of the Chicago dock operation to better streamline it and to help us in our efforts to do so across the country.

Chicago is the pilot because it is the largest and we feel this will net some benefit. It has already, and it will continue to do so.

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Q Has this question of air express been submitted to the Emery Board of Directors?

A Informal discussions.

Q If you has air express authority, would you consolidate air express or would you send it one the first available flight or what?

A You are talking about theory, if it is not going to happen, so I have to face the possiblity.

That is one of the problems. I could not distinguish between air express service and Emery air freight servie. We would have to slow down the freight service to make it less valuable than the express service.

It is just a conflict of interest. I cannot even contemplate operating that way.

Q Tell me how much freight is moved today with truckers beyond the airports.

A The last check we made on that, it varies between 15 and 20 percent of our total either originates, terminates, or orignates and terminates at a non-airport city. So that is in the dimension of two and a half million shipments annually.

Q You would use motor carriers for that type of shipment?

A Yes.

MR. BERNHARD: Mr. Examiner, just so there is no confusion, you understood the question "beyond the airport" to

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MR. BERNHARD: I think so.

CROSS-EXAMINATION

BY MR. BERNHARD:

Q Mr. Williams, obviously you have been --

EXAMINER KEITH: Mr. Bernhard represents the participating airlines.

BY MR. BERNHARD:

Q Obviously, you have and are dissatisfied with the air express service that you have received here at Washington. That is a fair statement, isn't it?

A Correct.

Q Have you endeavored to use any other service in lieu of air express service?

A Yes.

Q What other types of service have you tried to use?

A Airfreight.

Q Has that been satisfactory?

A No.

Q Have you tried using airfreight forwarders?

A No.

Q Why is airfreight unsatisfactory?

A Because of the time element required getting it to the airport before shipment.

Q Are you aware of the existence of airfreight forwarder service?

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A I am aware of it, yes.

Q Why is it you didn't seek to use that type of service?

A The additional cost.

Q In other words, is it true that you would like to continue to use air express service at the present rate?

A I would like to continue to use air express service at the present rate provided we had service.

EXAMINER KEITH: By that you mean --

THE WITNESS: Better service than we currently have.

BY MR. BERNHARD:

Q Are you using air express service today?

A Yes, I am.

Q You have not discontinued the use of that service?

A No, I couldn't.

Q We hope you get better service.

A Thank you.

EXAMINER KEITH: Mr. Meiser?

BY MR. MEISER:

Q You indicate in your testimony on page 1 when your films are ready for shipment you take them to air express by courier yourself, you take them to the National Airport?

A We have a courier service that takes it for us.

Q Why do you do that?

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A If I didn't do that, I would make any plane the same day.

Q You are aware, are you not, that the charge that you pay for air express includes a pickup and delivery door-to-door service?

A Yes, I am aware of that.

Q What is the situation at the other end? Does the recipient of these films likewise pick up at the airport, or what is the custom?

A That is in every instance to which I ship except one is picked up at the airport there. That one is delivered by express.

EXAMINER KEITH: Which one is that that is delivered?

THE WITNESS: That is Durham.

The arrival time is too late to make a newscast. So we have them deliver the next day.

BY MR. MEISER:

Q You refer later on to variances in recovery performance at the other end. What happens if a shipment is lost that is beyond the period that you mentioned, say, four or five hours?

A What do you mean what happens?

Q What do you do in that situation and what does REA do? Is that satisfactory?

A By chronology, the station to which I have shipped

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the film notifies me that it has not arrived on the aircraft which it was indicated. We check with REA here. Almost never do we find any indication here other than it was handed over to the airline that was involved for shipment on a particular flight.

Strangely enough, when that film usually shows up, it has not had time to arrive at another airport, it has somehow gotten fouled up in the terminal and eventually shows up in the REA office. Who is responsible, I can't say.

But I do know that it does not get to our station in time for a newscast.

Q Let me phrase it this way.

When a shipment does not arrive on time and you make inquiry, does REA have the capability of locating your shipment precisely at that instance wherever it may be?

A No, or if they have it, they have not given me word to my satisfaction.

MR. MEISER: That is all I have.

EXAMINER KEITH: Mr. Blum.

BY MR. BLUM:

Q As the Examiner indicated, my name is Jerome B. Blum I am with the Bureau of Operating Rights of the Civil Aeronautics Board.

Mr. Williams, in answer to Mr. Bernhard, you say you do not use airfreight forwarders. I gather the reason for that

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is they can't give you the priority of service that REA can, is that correct?

A That is correct.

EXAMINER KEITH: He also mentioned the rate aspect.

BY MR. BLUM:

Q If they could offer you a similar type of priority of service as REA presently does at a higher rate than REA presently has in effect, would you still not use them?

Would you still use REA at its present rate structure?

A I think the question is sort of conditional and the answer is sort of conditional. To be able to answer it, I must say this, that normally we get a shipment of film ready, we have a courier standing by to take it to the airport.

I can't conceive of the condition in which a freight forwarder would have somebody standing by at the United States Capitol on an almost constant basis to take the film to the airport for me and for other people that would be so involved, that we would be able to get that type of fast courier service to the airport.

Q Let me ask you another question, sir.

If you could tender the shipment or courier directly to the airlines and receive next plane out treatment, and this would be at a premium rate, would you be willing to accept and pay for this service?

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A In those instances where that service is now available, we are using it.

Q If the rate -- well, let me ask you this question.

Do you use REA now as you have indicated primarily because it is faster or primarily because it is cheaper than freight forwarder service?

A Primarily because it is faster.

Q If you could get the same service from the airlines that REA allegedly gets, would you then deal directly with the airlines rather than through REA?

A I would have to qualify that by saying that this determination would be made by the individual stations whom I represent and not by me as an individual, because all of my shipments are sent on a collect basis.

However, I have a very personal and direct interest involved simply because if a film of mine does not arrive at the station in time, frequently I am not paid for it because it was my responsibility to get it there in time for a newscast

Q Is it fair to characterize your answer as you are primarily interested in service rather than rates, is that correct?

A Correct.

Q In other words, your film must arrive by a certain time or it is useless, is that correct?

A That is correct.

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EXAMINER KEITH: You, of course, pass on any higher rate to the purchaser of the film?

THE WITNESS: That's right.

EXAMINER KEITH: May I ask, Mr. Williams, when you mentioned courier, I am not clear as to whether that courier is someone that the Washington News Service contracts with or whether that is a REA courier.

THE WITNESS: This is someone we contract with to deliver our film to the airports.

BY MR. BLUM:

Q In your testimony, you refer to an exhibit which is the REA announcement of guaranteed same day service.

Do you anticipate using this, sir?

A The question that I raised concerning this service was one why if they are able to do it this way they can't do it under present existing conditions.

What advantage there is to me in this particular situation, why they aren't able to do it now if they are able to do it for $5 more on an airport to airport basis. I am not particular concerned about the tariff, but I am concerned about the fact for them to give this as an excuse for an additional tariff as opposed to comply with what they currently say they are doing.

Q In other words, your reply to Mr. Bernhard as far as you hope to get better service, do you mean by that that you

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hope to get the service that REA is suppose to give you presently.

A That is my understanding of what they are supposed to give us presently.

MR. BLUM: No further questions.

EXAMINER KEITH: Any further questions?

Mr. Ryan.

Mr. Ryan represents Emery Air Freight.

BY MR. RYAN:

Q I just wanted to be sure you did, in fact, testify in response to a question by Mr. Bernhard that you have not used airfreight forwarders at all?

A That is correct.

Q And, therefore, you have no basis for a comparison of their service versus those of the airlines or REA?

A No, I do not have.

EXAMINER KEITH: Mr. Bernhard.

BY MR. BERNHARD:

Q Mr. Williams, you do understand what is meant by close-out time at the airport, don't you?

A Yes.

Q Are you sure that your courier has always brought all of your shipments to the airport in sufficient time to meet the airlines' requirements?

A Yes.

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Q He never misses?

A When he has missed it, he has always said he missed it, because he has a time requirement statement on the waybill.

So, I get the time back on the waybill. So if he misses it, he tells me.

Q You have, as I understand it, about 15 shipments a week?

A That's right, by air. I have others by bus.

Q At what time do these shipments depart Washington?

A Oh, they vary. Because they go to so many different cities. In general, they are after 11 o'clock in the morning, but not necessarily, usually between 11 and 4.

Q In general, how much trouble have you had on the average, two or three a week that missed the flight?

A That was the case, and the only reason that we don't now is we frequently allow more close-out time than that required to make certain flights.

Q By leaving more time, you have reduced that two or three a week down to what, one a week?

A One to two.

Q And these shipments weight one pound each, is that right?

A Approximately that.

MR. BERNHARD: No more questions.

EXAMINER KEITH: Any further questions?

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Thank you, Mr. Williams.

You may be excused.

(Witness Williams excused.)

EXAMINER KEITH: I will receive in evidence EX No. 1.

(The document referred to, heretofore marked Examiner Exhibit No. 1 for identification, was received in evidence.)

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EXAMINER KEITH: We call to the stand Mr. Wilson.

Whereupon,

JOHN WILSON

was called as a witness on behalf of the National Small Shipments Traffic Conference, Drug & Toilet Preparation Traffic Conference and Eastern Industrial Traffic League and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUINN:

Q Mr. Wilson, would you state your full name, please?

A John Wilson.

Q By whom are you employed, sir?

A I am employed by Hartz Mountain Pet Foods, Inc., as General Traffic Manager.

Q Is Allied American Bird Company a division of Hartz Mountain?

A Allied American Bird Company is a division of Hartz Mountain Products which in turn is a division of Hartz Mountain Pet Foods.

Q Did you prepare an exhibit in the matter pending before the Board in this case?

A I did.

Q Is this the exhibit?

A This is the exhibit.

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MR. QUINN: May we mark that for identification, Mr. Examiner?

EXAMINER KEITH: I will mark for identification at this time the testimony and direct exhibits of Allied American Biard Company. The exhibits are contained in a bound volume which is about an inch and a half thick and consists of Exhibits AAB-100, AAB-200 through AAB-328, AAB-600 through 603.

XXX (The documents referred to, were marked Exhibit Nos. AAB-100, AAB-200 thru AAB-328, and AAB-600 thru 603, for identification.)

MR. RYAN: Are you marking those for identification or were you receiving them?

EXAMINER KEITH: I was just marking them for identification.

MR. MEISER: Mr. Examiner, I have a practical problem. I thought Mr. Wilson was coming on tomorrow. So, consequently set of his exhibits is back in my office.

EXAMINER KEITH: You may borrow the duplicate record set.

BY MR. QUINN:

Q Mr. Wilson, is this your testimony?

A This is my testimony.

Q Is this true in every respect?

A No, there are corrections that I would like to make.

EXAMINER KEITH: I think the record should be clear,

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Mr. Quinn, when you say "Is this your testimony," I see AAB-100 is the testimony of Mr. Wilson. The balance, Exhibits AAB-200 through 328, is variousstatements of various people.

MR. QUINN: That is correct.

EXAMINER KEITH: I assume that this it not Mr. Wilson's testimony, the statements of these people.

MR. QUINN: That is correct, sir. Those are just exhibits. Mr. Keenan who sponsors AAB-600 will be here to testify tomorrow.

EXAMINER KEITH: Mr. Kennan sponsors 600. Which ones of the exhibits outside of his own testimony AAB-100 does Mr. Wilson sponsor?

Do you sponsor any other than your own testimony?

THE WITNESS: Yes, I sponsor AAB-100 up to 328, I believe it is.

EXAMINER KEITH: You sponsor these so-called statements, is that correct?

THE WITNESS: Yes, sir.

BY MR. QUINN:

Q Mr. Wilson, would you be good enough to point out, please, the changes you wish to make in your direct testimony AAB-100?

A Yes, sir.

On AAB-100, page 3, the third paragraph, line 6, it should read 45,000 instead of 60,000.

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On AAB-100, page 8, second paragraph, line 14, should read 12:01 a.m. instead of 1:20 a.m.

On page 9, second paragraph, line 13, the word "attorney" should be inserted between "my" and "office."

Q Mr. Wilson, do you have any other changes or additions?

A I do not.

MR. QUINN: Cross-examine.

EXAMINER KEITH: You are not offering the exhibits which this witness sponsors at this time, are you?

MR. QUINN: No, just his own testimony. We intend to offer everything, but we have to wait until we have our complete testimony in. Mr. Keenan is not here.

EXAMINER KEITH: You are just offering at this time AAB-100 which I will receive in evidence.

XXXX

(The document referred to, heretofore marked Exhibit No. AAB-100, for identification, was received in evidence.)

MR. QUINN: Mr. Examiner, we intend to offer everything that Mr. Wilson sponsors.

EXAMINER KEITH: Do you mean the statements of Melvin Hooper and all these various statements?

MR. QUINN: Yes, sir.

EXAMINER KEITH: For what purpose are you offering

these statements?

MR. QUINN: To show the critical need of these people for air express ervice.

EXAMINER KEITH: I have no objection myself if the parties are willing to receive statements of people who are not appearing here to be cross-examined.

MR. RYAN: You are about to hear one.

EXAMINER KEITH: Do you object to them, Mr. Ryan?

MR. RYAN: I object to any of these statements being put in unless each of the statements is sponsored by a witness whose statement it is.

MR. HARDMAN: I join in that objection, Mr. Examiner.

MR. MEISER: We join also.

EXAMINER KEITH: I am only receiving in evidence AAB-100.

I will have to exclude the other exhibits unless you bring witnesses.

THE WITNESS: May I make a statement, Mr.Examiner?

EXAMINER KEITH: Yes.

THE WITNESS: We have offered to bring witnesses who made these statements on any of those selected by the attorneys in the room within reason. Naturally, we realize that it is a physical impossibility to bring each and every one of these, and also it is an exorbitant expense to place upon

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a shipper. The airlines and the freight forwarders have not contacted us even though this request was made in their statement which has been in their possession since August 23.

MR. BERNHARD: The airlines have not objected.

MR. RYAN: Mr. Examiner, I don't think we need to argue with the witness. I believe you have already ruled.

EXAMINER KEITH: Cross-examination.

Mr. Wolfe, do you have some questions?

MR. WOLFE: No questions.

EXAMINER KEITH: Mr. Bernhard, do you have some questions?

MR. BERNHARD: Not at the moment, no.

EXAMINER KEITH: Mr. Ryan?

XXXX

CROSS-EXAMINATION

BY MR. RYAN:

Q I think we are at a little disadvantage because none of us understood this witness was going to appear today. But if you will be a little patient with me, I will be a little slow.

On page 2 of your testimony, sir, you state that your birds are shipped by both air express and airfreight; is that correct?

A Yes, sir.

Q Would you please give me a breakdown in terms of how many shipments are by air express and how many by airfreight?

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A There are approximately 45,000 shipments by air express on a yearly basis. That is based upon the last two years studied. There are approximately 15 shipments per week via an airfreight. The exact number escapes me at this time.

Q I am referring specifically to your statement on page 2 with regard to shipments from Oklahoma, Texas, Florida and California to your facilities at New York or Los Angeles.

A Let me try to explain this. The larger shipments come in via airfreight. They average 30, 40 boxes per shipment. The exact number of these have been introduced in another proceeding. I don't have those documents with me at this time. They are from our employees, and they average around 15 shipments per week for 50 weeks of the year.

Q So, these 15 shipments per week, each average 30 to 40 boxes, is that correct, sir?

A Yes, sir.

Q Would you give me the same number of boxes shipped in these markets which you specify on page 2?

A Could you clarify your question, sir?

Q On page 2 of your testimony, you have stated that your parakeets are bred in Oklahoma, Texas, California, and Florida, and are shipped to New York and Los Angeles. You have told me that those shipments average 15 a week and consist each of 30 to 40 boxes. My question to you now is in those markets, how many boxes are shipped by air express each week?

A I would say there would be approximately 15 to 20 shipments by air express from those markets.

Q Of how many boxes?

A Of 2, 3 to 5.

Q Would you agree with me that that comes out just about equal, doesn't it? You ship about the same number of boxes by air express as by airfreight?

A Let me point out that in weight and number of birds that the air express shipments inbound to New York do not exceed 5 to 7 percent of the total received from the breeding area.

Q So, 95 or 90 percent move by airfreight; is that correct?

A Thatis right, sir.

Q I take it in considering that degree of use of airfreight that you find airfreight very satisfactory for those shipments?

A Certain airlines, yes. Other airlines, no.

Q Do I understand that when you ship birds out from New York or Los Angeles that there is a different pattern that prevails and there is a higher degree of air express than there is of airfreight?

A There is almost a hundred percent dependency on air express. The only exception to that is the local pet shops around our facilities who pick up the birds personally.

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Q Would you explain why you use airfreight 95 percent for inbound shipments but air express predominantly for outbout shipments?

A We have found through experience that if we rely upon the breeder to ship his birds in, that the quality of the birds are not that good. Therefore, we employ buyers who check on the quality of each individual bird at the time of purchase, and it is economical for him to carry these crates to an airport and ship them by airfreight.

Q So, your reason for the difference, that is, using airfreight predominantly inbound and express outbound is a matter of rates?

A Also quality control.

Q Explain to me why you are satisfied in 95 percent of the cases inbound with quality control of airfreight and perhaps are not outbound and therefore use air express?

A Because those breeders who are isolated off of our pickup routes breed certain specific species and types of parakeet which are valuable to us and valuable to them. So, therefore, we know them, we have had long experience with them, we accept their shipments in via air express.

Q I am afraid I am not understanding you. I believe you have testified that you use air express predominantly for your outbound shipments for two reasons, one was rates and the other was quality control.

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A I am sorry, I misunderstood the question completely. I thought we were still talking about inbound shipments.

On outbound shipments we use air express for the geographical coverage that they give us.

Q Have you had an experience whereby you have offered to the airlines these birds in airfreight and they have turned you down because they lack geographical coverage?

A No. We have the convience of air express which is a pickup at our premises and a delivery to the consignee.

Q But you understand, do you not, that both the airlines and the airfreight forwarders also provide pickup and delivery service or can arrange for it?

A I have knowledge of what I instructed Mr. Keenan's clerk to do, and I think that speaks for itself. We will defer that to Mr. Keenan.

Q That is fine.

I wonder if you could describe in some greater detail the convention that youheld in Waurika, Oklahoma.

A I would be more than pleased. It was not a convention. It was a direct result of the --

Q Forgive me, but I want to ask you some specific questions.

I would like first to know how and in what form these persons were advised of the meeting.

A It was a phone call from Allied American Bird

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Company to Mr. K. Scott in Waurika, Oklahoma advising him I would make this trip and giving him the approximate time of my arrival. Mr. K. Scott then advised the bird breeders from whom he purchases these birds at this meeting. They were all in attendance.

Q Do you know the content of the telephone call that Mr. Scott made to these people?

A I do not, but I do know the content of my telephone call to Mr. Scott.

Q Was the speech of some sort given on this occasion?

A It was.

Q Who gave that speech?

A Yes.

Q Would you describe that?

A I informed them that various organizations in the pet industry had gone into the United States District Court and secured an injunction for seven days, that it was necessary for us to submit sufficient evidence of public interest to the courts so that we could further bolster our contentions which was recognized by the judge.

Q Well, what did you say to them then?

A I told them that it was necessary for them to describe exactly what it would mean if air express went out of business due to an embargo by all of the airlines.

Q Would you describe as accurately as you can what

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instructions you gave them for the preparation of their statements?

A The instructions I gave them was simply after I described the situation -- was simply to explain how this would affect you.

Q Would you explain what you explained?

A The only thing I explained was a resume, factual, of the proceedings before the court.

Q Excuse me, but you said "I explained to them how this would affect you." In what words did you make that explanation?

A I stated that if air express ceased operations, as was planned and programmed, that Allied American Bird would no longer be able to distribute on a nationwide basis and we could no longer provide a market for their birds.

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Q So you naturally told them you would be going out of business, is that correct?

A The fact is, sir, if the embargo did go into effect, we would have been out of business.

Q Is that what you told them or isn't it?

A I told them that we did get a continuance or we did get a stay of our injunction for seven days and that we wanted to pursue and secure a further injunction so that we could continue in business.

Q Let's try it again. Did you tell them that if they did not sign these statements, thereby helping you to prevail in your lawsuit, that your company would terminate its operatic

A I told them that we could no longer be a market for their birds. Those were my exact words at the time.

Q At several points in your testimony you described the scope of REA's service. At page 10 you say, "It is difficu for me to see as to how a diversion of traffic from REA and the air express markets to the air freight forwarders who only serve major populations would have any effect other than, and so on."

I take it from that that you have some knowledge as to how many points are served by forwarders versus how many points are served by REA?

A Yes, sir.

Q Would you tell me how many points are served by

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forwarders and how many points are served by REA?

A I know that with REA I ship to 5,000 different destinations. I also know that the air freight forwarders have put out an information booklet about thier industry in which they list -- at that time, at the end of 1969, 154 points

Q Let's see if we are talking about the same thing. How many points -- when you say served -- do you think that REA serves in the sense of having an office?

A The fact as to whether they have an office in Okemah, Oklahoma, is immaterial to me, as long as my merchandise is delivered to the store in satisfactory condition.

Q Let's go back to my question. Do you know at how many points REA does have offices?

A No, only from what I know of from the CAB-1 which lists the points, I have never tabulated them.

Q Do you know whether in fact REA has offices at the points listed in CAB-1?

A I have never had the occasion to inquire.

Q I believe you said it didn't make any difference really whether REA had an office. The main point was that you got service.

A That is right, sir.

Q Have you ever tried to send your birds by air freight to these points?

A We do have one customer in Flint, Michigan, to whom

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we ship a weekly shipment via air freight. We ship this into the airport on our own vehicle, and the customer meets the projected flight with his vehicle.

A Is that done by direct carrier or by an air freight forwarder?

A Direct carrier.

Q Have you used the direct carrier to provide the pick-up and delivery service?

A. I have not.

Q And therefore you don't know whether the direct carrier does it or doesn't do it?

A If my consignee wishes to pick them up at his expense at the airport to insure their perfect arrival, I will not quarrel with them.

Q We can get along a lot better if you will answer my questions, and I will request that the last one be read.

(The reporter read the record as requested.)

BY MR. RYAN:

Q That is provide pickup and delivery service?

A I don't know. I am not that familiar with Flint, Michigan.

Q Would you turn to page 10 of your testimony, please. On page 11 you have a sentence which I am having trouble understanding: "In other words, the solution to the

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problem of increasing the efficiency and maintaining the price level of the air express operation appears to be a further concentration of air express traffic to be handled by a single firm." What do you mean by "further concentration"?

A In my opinion, REA's volume is far less than their capacity to handle. I also believe -- and we go to the word "concentration" -- that a dilution of their traffic would place them in a precarious or hazardous position.

Q By further concentration, I assume you just mean that REA should get out and hussle up some more business?

A Exactly so.

Q Do you take a position in this porceeding on REA's application to become an air freight forwarder?

A I definitely take a position in this proceeding. I do not believe that REA would be a satisfactory air freight forwarder.

EXAMINER KEITH: Is that -- well, go ahead, Mr. Ryan.

BY MR. RYAN:

Q Upon what do you base the adjective "satisfactory"?

A To fit or serve the needs of my company. I do not believe that their service in heavy weight shipments would be as satisfactory as those major shipments I purchase from an air freight forwarder, not live animals.

Q Staying with the animals, do you think that their service as an express carrier would be diminished if they

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become an air freight forwarder?

A Definitely.

MR. RYAN: Thank you very much.

EXAMINER KEITH: Mr. Meiser.

BY MR. MEISER:

Q On page 7 of your testimony, Mr. Wilson, you discuss the situation where the shipment is small, that the shipper arranges the pickup out of their premises or delivers the birds to the air express office at the airport. Could you be a little more specific on what you mean by "arranging a pickup out of their premises"?

A There is in certain geographical areas or communities they can call REA by phone and REA will dispatch a truck out, or they have a regular scheduled route in which the driver will make a pickup on a pre-determined day.

Q Is that generally within the airport city, within the air freight terminal area or say a radius of 25 miles or so?

A It is in certain instances as much as 100 to 125 miles away from the airport.

Q The other thing you mentioned there is of course they drive it in themselves. Do you have any kind of statistical breakdown as between what total number of shipments you are talking about first and then a breakdown as between when they arrange for pickup versus taking it into the airport?

A I have not made a study on that. I am aware of

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this situation because there is an REA charge for a before or subsequent movement by air. That is why I know some of my shipments are coming in beyond the terminal radius of an airport.

Q But you can't --

A I can't give you any statistics on that, sir.

Q Further down on that same page in talking about 60,000 shipments a year outbound from New York to Los Angeles and referring to your experience you say it has been our experinece that prompt service with an elapse time of one and a half days is important to a great majority of our shipments.

Do you have any numbers for us on this? What do you mean by greater majority?

A We operate our distributions systems on a negative basis. Unless we get customer complaints or a high claim loss ratio, we assume that the carrier is performing a service. We have that many shipments moving at all times, and it would be impossible to trace them or follow them up.

We do have occasionally a storeopening, when we have our own sales people at the store. Upon that information I judge my day and a half time.

Q I take it there are a number of shipments that take more than a day and a half?

A Undoubtedly.

Q As I read your testimony, immediately following on

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this page, the only complaints that you have received were because of the Mohawk Airlines' embargo or the time that they were on strike, is that right?

A Those were the only complaints I have personal knowledge of. I cannot state that all of the other shipments were delivered on time, but I do know that I had to reroute and reschedule these shipments. As a matter of fact, we had to haveour own vehicles up there to make deliveries.

Q How many employees does Allied American Bird Company have?

A Approximately 65.

Q Are there other employees involved in customers' service?

A There are.

Q And relations?

A Yes, Hartz Mountain Products Corporation employees.

Q When you ship your products by air express, do they move under a specific commodity rate or the general commodity rate?

A They move under section 10 of CAB-1, which is a specific commodity rate on live animals.

Q Is that rate lower than the general commodity rate?

A The $6.25 minimum is the adjudged legal rate for animals and birds.

Q And the current minimum on general commodity traffic

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is what, $8.50?

A Yes, sir.

MR. MEISER: That is all I have.

Thank you.

EXAMINER KEITH: Mr. Hardman.

BY MR. HARDMAN:

Q Mr. Wilson, when you ship your birds via air express, how long can you reasonably expect them to live in transit?

A Six days.

Q And do you expect in the normal course of events that the carrier handling the birds will feed and water them during that time?

A Our cartons are sealed. There is no -- we do not trust any form of transportation to provide proper care for live animals. We insure that we pack them with enough water and seeds so they can reach their destination with a safety factor.

Q On page 7 of your testimony, where you refer in the second paragraph to the one and a half days elapsed time. By that do you mean 36 hours?

A 36 hours.

Q And that is a generalization which would apply anywhere in the continental United States?

A No, let me see if I can clarify this point a little.

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When we have a new store opening, we send our executive sales personnel to participate in the store opening. We send our shipments at their request, and they report back to me at what time the birds get there. Some times it will be very rarely 6:00 or 7:00 o'clock in the morning when they make their delivery. Other times it is at noon. To make a flat statement of 36 hours, I couldn't do it. It is normally a day and a half. We ship out from New York on a continuing basis at which we have three or four pickups during the day, which clear out all of those birds packed at that time.

So, I don't know for sure whether it went out on the first or second, or third pickup, to make a 36 hour time period.

Q When does the last pickup occur at New York?

A Between 4:00 and 4:30 p.m..

Q Now, when you say day and a half from that 4:00 to 4:30 pickup, does that mean by noon the second business day following?

A In other words, on a Monday, if we were to ship out at 4:00 o'clock, it is possible that this shipment will be delivered by noon of Tuesday in Boston or Virginia and so and so. It is impossible that it will be delivered by the following day. It depends on whether it goes on a direct carrier flight or a combination carrier flight and how many transfers are incurred.

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Q So, even in a relatively short market of, say, 600 miles, for example, you are not unsatisfied with what amounts to 48 hour service?

A Definitely not. I cannot purchase that same kind of transportation from any other source.

Q In your experience in dealing with complaints from the consignees on an exception basis, I believe you testified that you would not know of unsatisfactory service unless there was a complaint brought to your attention or a claim?

A That is correct, sir. There have been complaints, but they have been minor, isolated instances, not a trend or a high percentage.

Q As far as your consignees are concerned, do you know whether their standards for making a complaint to your office office would be same as your standards of satisfactory service, that is, anything up to let's say 48 hours?

A I couldn't answer that. I have spoken with their general traffic departments, those of our consignees who have them. We have not had any cause for disagreement. But whether they have adopted a standard in each individual store to conform with ours, I do not know.

Q As a practical matter, isn't it a fact about the only time that they would complain is if the bird was dead when it got there.

A Or is it was late delivery or if we had a promotion

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and they missed it.

MR. HARDMAN: I have no further questions.

EXAMINER KEITH: Mr. Griffin.

BY MR. GRIFFIN:

Q Mr. Wilson, As I understand the distribution system, birds from the Waurika Bird Breeders go to Oklahoma City and out to New York. That is the description I have heard.

A That is correct.

Q Can you tell me why it is necessary to ship the birds, first, from Oklahoma to New York and from there to distribute birds around the country?

A In other words, why wouldn't it be better to set up in Waurika and ship them out of there? The parakeets which seem to be the subject of this discussion is only one species of birds. The other species of birds come in from abroad, which are then combined into our outbound shipments. We must, in order to set up our distribution facility be near a major airport -- a major international airport as a direct facility. That is what governs our choice of New York and Los Angeles.

Q For what reason are you unable for the parakeet business at Waurika to have a regional office?

A We don't ship parakeets by themselves. We ship mixed groupings. We would then be forced to maintain various

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quarantine stations or treatment stations in the geographical areas which would be impractical.

Q Would you know the average weight of a shipment outbound from New York?

A Shipments outbound out of New York move basically under REA's dimensional rule which gives a chargeable rate of 6.9 pounds per cubic foot.

Q And how would you compare the rate available through REA for those shipments with rates -- other air transportation rates available to you?

A 94 percent of our shipments fall within REA's minimum charge categories. Oh, shipping the same number of shipments would entail the cartage cost of getting them to the airport city, the cartage cost of taking them out of the airport, together with the minimum charges assessed by the airlines. To put all of these together, I think it would be prohibitive even to consider.

Q So you are saying that REA's charge considering the same amount of service is lower in 94 percent of your shipments?

A The charge of $6.24 was charged by Order E-26405 in which the Board itself decreed the minimum charge. We have supported REA's or Air Express' petition to increase this minimum charge to the level of rates of general commodities. This is on record at the Board.

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Q I take it your answer is yes?

A Yes, sir.

Q On page 6 of your testimony you make reference to the Mistletoe Express at Waurika. Could you explain what that is?

A The Mistletoe Express is an express company operating within the State of Oklahoma who is offering express service at a $3.00 minimum charge according to their tariff the last time I say it. Whether their tariff has changed in the past year I do not know. They operate as an express service. They will take our birds from Waurika, Oklahoma to Oklahoma City and turn them over to the airlines. The airlines would indicate the Mistletoe charges on their waybill as advanced. That is my familiarity with the Mistletoe Express.

Q So, this is a surface express operation?

A A surface express operation.

Q Do you know where that is located, the base of that operation is located?

A I do not know offhand. I have the record of it in my office.

Q You stated in your testimony that the availability of air express is very important to the bird industry in terms of not only allied American Bird but also the bird breeders.

A I believe the sentence read the pet industry, sir.

Q All right, the pet industry. You talked about

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geographical distribution. Do you mean that you would not be able to distribute on a wide geographical basis at all, or are you saying that the cost of providing that service would be prohibitive without the general rate level now available from REA?

A Well, I believe that our market will be so restricted that it would affect our viability in that we will sell to Grant, Kreske, and Woolworth pet shops in the United States, and these are areas in which they do not even have motor carrier service.

Q Was your answer yes or no?

A You have given me two qualities on this which were price and service. I have only responded on the service.

Q Can you then respond then on the basis of price. You state that the price of providing shipment of birds to its various markets in a large geographical distribution would involved a prohibitive cost if the present rate levels offered by REA were not available, would you say?

A I cannot give you a definite answer on that because I don't know what volume I would be talking about. Our costs are dependent on volume. If I have an unknown reduction in my volume, I cannot estimate what my distribution cost would be.

Q What were your thoughts at the time that you talked to the people in Waurika?

A My thoughts at the time with the people at Waurika,

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I had no practical alternative of distributing our product. We would immediately ship out what we could to where we could and have gone out of the bird business.

Q So you were saying at the time without REA's service you would not have the geographical distribution regardless of cost?

A That is right, sir, and we couldn't exist on one air freight shipment to Flint, Michigan.

EXAMINER KEITH: Do you have any redirect?

MR. QUINN: No, sir.

EXAMINER KEITH: Thank you Mr. Wilson.

You may be excused.

We will recess until 2:00 o'clock.

(Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene at 2:00 p.m., this same day.)

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A As I just indicated, I consider the Air Express service rather essential for William H. Rorer, as well as for the rest of the drug industry, inasmuch as I am a member of the Executive Board of the Drug and Toilet Preparations Traffic Conference, because of their capabilities of moving freight rather rapidly and because of the priority systems that they enjoy over other freight movements via air.

Q You said in support of the Air Express service. Do I conclude from that your support is for such service, rather than any particular or special support for REA?

A Well, it is my understanding that the entire issue at hand here is strictly Air Express.

EXAMINER KEITH: But if you were told that it could involve Air Express by any one of a number of applicants, what would your answer be?

THE WITNESS: I am afraid that I would have to have a qualification of the capabilities of the air express service of any one of the other applicants or proponents or opposition.

BY MR. RYAN:

Q And similarly, you would have to have a qualification and know what REA is seeking in this case, would you not?

A Yes.

Q Do you know what REA is seeking in this case?

A They are seeking a continuation of the Air Express service that they have had rather historically for many, many

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years and seeking the continuation of their priority system of movement of their air freight.

Q Insofar as you are aware, that is all they are seeking in this proceeding?

A To the best of my knowledge.

Q On Page 1 of your testimony, you state that you use both air freight forwarder service and Air Express service. Could you tell me in what percentages you use each of those types of service?

A Without the benefit of any statistical information in front of me, I venture to say that we are running approximately 50 percent on either side.

Q Now, you have spoken, both now and in your testimony, of the priority which Air Express receives. What do you understand that priority to be?

A I understand that priority to be the first freight aboard some approximately 33 major airlines in the United States after the airline places its own freight and, of course, the U. S. mails, that they have the next priority aboard, and that is prior to anyone else's freight getting aboard.

Q You understand it, I gather, to mean after the carrier's own freight?

A That is true.

Q Do you understand that the priority is unlimited in quantity?

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peopel that route freight and so many areas where the bills are located for filing in different areas of jurisdiction for audit.

If I had to take a rough guess, I would say it was approximately 15 percent air express, 85 percent air forwarder.

BY MR. RYAN:

Q At the bottom of page 1 of your affidavit, you say Air Express service is in many cases the only air service that can be utilized. Would you give me one example of any market where that is true?

A We have so many stores on off-line locations and so many manufacturers on off-line locations, technically air service could be used, I imagine, from any point in the United States to any otherpoint, it was my feeling that it would be impractical to ship it by air service where the transit time would be fairly comparable to a surface mode. I could have many examples of some of our stores like Marquette, Michigan which I believe is in the upper peninsular from a manufacturer, say, in Fort Smith, Arkansaw. There are 8,000 manufacturers that we ship from to 2,000 locations, many of which, for example, in towns in Colorado I have seen that are on the top of mountains, we have a catalog store up there. Although I have not attempted to use a forwarder or an airline on a shipment from these off-line locations to another off-line location, it was my opinion that it would be impractical to even try it.

Also, we found in many cases that where we have tried

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to use air forwarders, we have tried to organize some semblance of routing from many points in a given area, that many of the manufacturers were unable to get air freight forwarder pickups because of the nature of their location, their inability to know who to contact, and therefore Air Express was the only means that we could use to get an air shipment.

Q Now, is this because Air Express maintains offices in all of these remote places, is that the idea?

A Well, if they don't maintain offices in the remote locations -- of course, in many of them they do have surface offices that could be contacted where information at least could be garnered on how to get a pickup -- there is a much greater familiarity with the Air Express or REA Air Express or REA service than there is with many of the Forwarders. We may have excellent service for a small Forwarder out of the New York area that no one even heard of down in Burlington, North Carolina, and this is the problem we are constantly confronted with.

Q Going back to my previous question, I take it your answer is no, that you cannot give me an example of any market in which Air Express is the only service available?

A Well, I tried to explain what I meant by the only service available, and I would say many of our off-line points are such markets.

Q Have you been advised by anyone as to the number of

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offices which have been closed by REA since you prepared this affidavit?

A I am aware that many offices have been closed.

Q Have you any idea how many?

A Numberwise, no, sir.

Q On page 2 of your affidavit, Item 4A, you say "without this service many of our air moves could not be made and we would be forced to revert to surface transportation."

You understand, do you not, that the air movement would not in any way be curtailed if REA were not in business, that the airlines would still be operating?

A I understand that. I was referring to a complete move by surface transportation.

MR. RYAN: Thank you very much.

EXAMINER KEITH: Mr. Meiser, do you have any questions?

MR. MEISER: No questions.

EXAMINER KEITH: Mr. Hardman?

MR. HARDMAN: No questions.

EXAMINER KEITH: Mr. Giffin?

BY MR. GIFFIN:

Q I understand that your main difficulty in terms of getting things moved quickly is fashion items, is that correct?

A There is a whole slew of them. Fashion items is one of our major problems, and they were my responsibility at the time this affidavit was filed. Of course, I get involved

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in other areas, and I can give you other examples where speed is of necessity. For example, we run fashion shows from various of our stores, and they are on a very tight schedule. We may have the show one day in a Florida store and the next day in an Albany store. We have found the only way we can get them to the stores, get them picked up at the airport in some occasions at three o'clock in the morning, is by Air Express. We have been very successful in getting these shows. I don't know the wisdom of having one show in Florida and the next in Albany, but this is the way they run things, and it has been necessary for us to use the Air Express service in those cases. Sometimes it is not even a question of speed. We recently put into operation shipments of all of our watches out of Chicago to our various locations in the United States. We have had this movement and we have used various modes of transportation mostly by air, and we have had a very serious claims problem on this. Within the last tow months, we have switched all these watch shipments over to Air Express, because we are able to utilize their armed guard signature service on these moves. It has worked very well. We have used them for two months, and we have no claims in this period.

Q Do you use Air Freight Forwarders at all for these shipments that require a quick movement in some markets?

A Well, yes, we do. Let me just explain that 95 percent of our shipments move within our own consolidating

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consideration home deliveries of the shipments.

BY MR. GIFFIN:

Q With respect to the use of air movement, what criteria do you use to choose between REA and the Air Freight Forwarders?

A Between Air Express and Air Freight Forwarders, is that the question?

Q Yes.

A We use various criteria in deciding how we are going to route a shipment. We use cost, we use speed, we use the location that the shipment is coming out of, we use the destination that the shipment is going, and we try to make an intelligent routing based on those various factors. In many instances we use Air Forwarder; in many instances we use Air Express. But we use speed, we use cost, location, destination, necessity for the shipment. If a store is out of hot pants in Florida and hot pants are the big item that day, we have got to get them down fast because if customers come in and don't find the hot pants, they will go to J. C. Penney's and find them there.

MR. GIFFIN: That is all.

EXAMINER KEITH: Mr. Meiser?

BY MR. MEISER:

Q Mr. Heine, in response to a question by Mr. Giffin, you were referring to the fashion shoes, say, in Florida today and Albany, New York.

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A That's correct.

Q I believe you said in that situation where the crunch is really on, you rush these items that are involved to the airport where you put them in Air Express service?

A If it is necessary to get them into the store in time to set up the shoe, we have done that. In one case, we had a vice president go up to Albany and go to the airport at 5:00 o'clock in the morning to pick up a shipment from Air Express and bring it to the store himself.

Q You have anticipated my next question, which was do you do that at the other end, in other words, where time is really of the essence, you take it to the airport and also pick it up at the other end?

A It is conceiveable it is done. To my knowledge, I have no knowledge of that part of it being done. In many instances, it is not picked up at the airport on the destination end. It is brought over to the store by Air Express. I am just giving you an instance that I know of in that case where we have picked it up at the airport.

MR. MEISER: Thank you.

EXAMINER KEITH: Mr. Bernhard?

BY MR. BERNHARD:

Q Mr. Heine, in your discussion of transportation, you haven't said one work about using the airlines' direct service. Do you ever use Air Freight directly?

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TESTIMONY OF MR. GREEN, SHIPPER LEAGUES

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of our transportation system and we gave support to Air Express. The exact specifics as to whether the embargo was actually in effect or not, I just don't recall.

MR. BERNHARD: Thank you.

EXAMINER KEITH: Mr. Ryan?

BY MR. RYAN:

Q In your direct examination, you made the interesting statement that you had reduced your movement via air express because of specific and local management problems of Air Express.

A That is correct.

Q Would you tell us at whatever length is appropriate what those problems are and where they are?

A Specifically, Air Express has never been terribly efficient, at least not in my experience in the New York area. Since that is a major shipping point, it is essential to us to make the decision as to what mode of transportation to use based on the efficiency of the organization in the city that we are using them.

We never did use air express to any great extent in the New York area which is where I was based, and since my transfer to St. Louis, I have seen no reason to begin any activity in that city with air express, with a few exceptions. Because air express enjoys a priority boarding relationship with the direct carriers, there are many flights that are

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closed or at least in my experience I have found have been closed to commercial accounts such as myself because they carry the U. S. mail and air express exclusively. Because we deal with a shipment of a medical nature, we too have a priority, and we can board our freight aboard these restricted flights provided we have the time to make specific arrangements with the carrier involved.

Sometimes we don't have the time to go through the chain of command necessary at the carrier, and consequently, we can use air express with specific instructions to board the particular piece of freight involved on a particular flight on an airport-to-airport basis. And we do use air express in both St. Louis and New York on these occasions and on others.

The major reason that we are interested in seeing the air express service continued is because of the REA service to the offline points which provide not just single air bill responsibility but single carrier responsibility control responsibility, where you are not using an interline agreement with another company, and also because of the fact that -- the fact that air express is located at most airports on the airport itself and has direct access to the ramp areas, and because the carriers themselves, both pick up and deliver the cargo that air express ships with them, we find in many cases air express is the only way that we can move certain shipments, although overall we have diminished our activity with them.

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Q Could you tell me what percentage of your shipments move by air express?

A Approximately 1 percent air express, 99 percent direct air carrier.

Q One percent air express?

A Yes, that is correct.

Q You have said that air express is located at most airports?

A Correct.

Q Is it your understanding that an employee of REA is located at most airports?

A Let me qualify that. Let me state that by saying most major airports and certainly the major airports where I have had direct experience. I can give you a few of those if you wish to hear them. The air express facility is located not just on the airport, but accessible to the ramp areas, and the carriers themselves tender and pick up freight from air express, which is an advantage they enjoy over the airfreight forwarding industry as it is constituted today.

Q Do you know what this case is about?

A In general, I do, yes.

Q Would you tell me what your understanding is?

A It is my understanding that the airfreight forwarders association or a a group representing the airfreight forwarders are contending that the air express service can be provided

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by an airfreight forwarder and does not necessarily have to be provided by REA who presently holds the contract. That in general is what I believe this hearing to be about.

Q Where did you get your information?

A I got my information from a letter I received from Arsham and Keenan, attorneys in New York, and in subsequent discussions with representatives of that firm.

Q Do you know what, if any, authority REA is seeking in this case?

A No, I don't specifically, except there is also I believe a concurrent docket dealing with a rate dispute between the airlines and REA. I don't know if that is this specific docket.

Q Do you take a position that a company which is an airfreight forwarder shouldn't render express service?

A No. I am stating that today, in 1971, the company that is providing the service and is best equipped to provide the service because of their specific situations at specific airports is REA, and that as a traffic manager when determining what mode of transportation to use, I have got three basic options. I can use the service of the airlines, I can use the services of Air Express, or I can use the services of an airfreight forwarder.

In my opinion, all three have advantages and must be weighed accordingly, and they are distinctive.

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Q You have said --

EXAMINER KEITH: Let me ask the witness to expand on his reasons for saying they are distinctive.

THE WITNESS: The air carrier attempts to move basically large quantities of freight. Its rates are so constructed so that the shipper is encouraged to both containerize, consolidate and tender the larger shipments to the direct air carrier. The direct air carrier in recent years have tried to discourage through their pricing structure the minimum shipment and force that shipment in essence into the hands of some sort of consolidater or air express. I think the word "consolidation" is what differentiates the air express service from airfreight forwarder. The method by which an airfreight forwarder generates a profit is consolidation and containerization. He doesn't ship packages one at a time in general. It is in his economic interest to consolidate and containerize those shipments, and consequently freight which is tendered to him, for example, early in the day or early in the afternoon will generally wait and go in an "A" container on a freighter that arrives at its destination sometimes the following morning, but this is unacceptable to our particular commodity which is delivered to hospitals at 8 o'clock in the morning anywhere in the country.

Air express, on the other hand, does not consolidate. The force behind their operation is continuous flow. I am not

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saying they make the next flight out every time you give them a shipment, but that is the way their service is geared, and they try as best they can within the limitations, as I say, of the specific offices involved to ~~ca~~ach~~ie~~ve that objection. Sometimes they don't succeed. But they don't deliberately sit on freight in an effort to consolidate it into a larger unit in order to get a more favorable weight break from the carrier, and that is what the forwarder does.

EXAMINER KEITH: Mr. Ryan, go ahead.

BY MR. RYAN:

Q Do I take it from your response to the Examiner that you would not like to see REA Express be granted the right to consolidate its shipments?

A No, provided there is a place within the REA system for both classes of service, I have no objection to what they do. My interest is in maintaining the third option.

Q Your interest is in having some kind of express service whereby your life and death shipments get there fast; is that right?

A Let's qualify that.

Most of the shipments we handle are not life and death. There are other procedures in medicine that can be used as a replacement for isotopes. But they are urgent and you are dealing with pretty sick people, and in that respect you are right.

* * *

A No, they have asked me. I haven't asked them. I found once again that their operating procedures were insufficient to cover the emergency or the routine shipment in my opinion.

Q You testified you diminished the use of air express service.

A That is correct.

Q Could you give us some before and after figures?

A I would say that prior to the date of this affidavit, we probably used air express in about 20 percent of the cases. That is, believe, the roughest possible figure.

Q And currently?

A One percent.

Q As I understand it, when you use the airlines directly, do you follow the same procedure, that is, you take it to the airport users? That is also on an airport-to-airport basis?

A Our use of a direct carrier is on the same basis of an airfreight forwarder. We have our own airfreight forwarder operation going that a forwarder would use with people on duty 24 hours a day to follow those shipments. In view of the nature and the use of the commodity, there is really no other way.

We also containerize, for example, but on our schedule and not on the forwarder's.

MR. MEISER: That is all. Thank you.

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MR. QUINN: I would like to call Mr. Stewart now, please.

This is Exhibit NED-410.

Whereupon,

JOHN P. STEWART,

was called as a witness on behalf of the League, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUINN:

Q Mr. Stewart, would you please state your full name and address for the record?

A John P. Stewart, 1815 Cobourg Court, Baltimore, Maryland.

Q By whom are you employed, Mr. Stewart?

A The Medical Eye Bank of Maryland, Inc.

Q What is your position with that company?

A I am chief opthalmic technician.

Q Are you the gentleman who replaced David Berger?

A Yes, I am.

Q Do you have a copy of the exhibit marked for identification NED-410?

A May I see it? Yes.

Q Are you familiar with the contents?

A Yes, I am.

Q Do you believe the facts stated there to be true?

A. Yes.

Q. Do you have any additions or corrections?

A. The only correction might be that I personally haven't tried other airfreight forwarders, but Mr. Berger had, and that is from his experience.

Q. Do you wish to adopt this as your testimony in this matter?

A. Yes, I do.

MR. QUINN: You may cross examine.

HEARING EXAMINER KEITH: Mr. Meiser.

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CROSS EXAMINATION

BY MR. MEISER:

Q. Would you describe for us what you mean when you say the Medical Eye Bank depends almost entirely upon REA Air Express?

What do you mean by air express? What kind of service?

A. We ship eyes, human eyes to cities all over the country to be used for corneal transplants.

We rely almost a hundred percent on REA.

Q. But when you have a shipment to be made, how is it handled?

Do you take it to the airport?

A. Yes, we call REA. They give us a schedule, a routing, and then we take the eyes to the airport and they

put them, or see that they get on the plane and ship them to wherever they have to be shipped.

Q They give you an airline flight schedule?

A Yes.

Q Is the same true at the other end, that you arrange to have the eye picked up at the other end?

A The people at the other end make arrangements to have the eyes picked up from their end.

MR. MEISER: That is all. Thank you.

EXAMINER KEITH: Mr. Ryan.

MR. RYAN: No questions.

EXAMINER KEITH: Mr. Giffin?

BY MR. GIFFIN:

Q Mr. Stewart, you said you had no personal experience with airfreight forwarders. Have you or Mr. Berger, to your knowledge, used either airfreight forwarders or direct airfreight.

A Somebody coughed -- I didn't hear the middle of your statement.

Q You said you had no knowledge while you have been in this position of attempting to use airfreight forwarders, and I am asking if you know whether Mr. Berger attempted to use airfreight forwarders or whether either of you attempted to ship your eyes through the airlines themselves directly?

A On occasion, we do.

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Some airlines ship direct, and if we can get a schedule -- with eyes, you can't preplan ahead of time. You get a pair of eyes, right now, they have to be sent right now to wherever they have to go. You can't wait and say we will do it tomorrow or the next day, and you can't call two days ahead of time and say, "We are going to have some eyes to go to such and such a place."

We get the eyes and we call REA, they give us a schedule, and we ship them to them. They are open 24 hours a day, we can always call them any time of the day or night, and we can always go out to the airport any time of the day or night, and the eyes can be picked up around the clock when they arrive at the destination.

Q What is the procedure if you use a direct air carrier?

A About the same, but the problem here is they are not always available quite frequently. They close at 11:00 o'clock and they don't open maybe until 7:00 or 8:00 o'clock in the morning. We can't wait until 7:00 o'clock in the morning to have them sent out if we have the eyes at 3:00 o'clock.

Q Can you tell me how critical that time period is between 11:00 p.m. and 7:00 a.m. in terms of the movement of eyes?

A We ship eyes around the clock. We get -- any time

we get a pair of eyes -- the term "eye bank" is really a misnomer. We don't keep eyes, collect them and send them out, you know, from a stock on the shelf.

We get a pair of eyes, say, right now, we make arrangements to have them sent as soon as we get them, and as soon as they are sent, they are sent to the destination.

Q. Would it be possible for you to hold them from 11:00 to 7:00 and ship them out at 7:00?

A. In some cases, it might be. In some cases, it wouldn't be.

Most corneal surgery is elective, and the balance of it would be emergency type cases where an eye has to be removed as soon as possible, or the person -- if he is not already blind, he will go blind and perhaps lose the eye completely. Of course, we don't want this.

EXAMINER KEITH: How long can you keep the eyes before they can be successfully, let's say, transplanted? Is there a time limit that you can retain eyes?

THE WITNESS: They must be transplanted within 36 hours after ther person dies.

EXAMINER KEITH: After they are removed?

THE WITNESS: After the donor dies.

But the problem is here that sometimes we don't always get -- ideally, we would be right there at the person's bedside when he dies and remove the eyes, but there

is a problem of going through channels.

The technician must go from the eye bank to the hospital. He must come back. He must call the eye bank or the opthalmologist that needs the eye and see whether or not he can use it at this particular time.

All of this takes time and 36 hours can be eaten up pretty fast.

BY MR. GIFFIN:

Q If either air freight forwarders or the airlines themselves offered around the clock service like this, would that be sufficient for your needs?

A. It probably would be.

EXAMINER KEITH: Any further questions?

Thank you. You may be excused.

(Witness excused.)

EXAMINER KEITH: I will receive in evidence NED-410.

(The document referred to, heretofore marked Exhibit NED-410, for identification, was received in evidence.)

MR. QUINN: I would like to call Charles Gibson to the stand, please.

His exhibit is NED-411.

* * *

A No, I do not at this point.

MR. RYAN: Thank you, sir.

EXAMINER KEITH: Mr. Meiser.

BY MR. MEISER:

Q In the last paragraph on page 1 you refer to occasional shipments with life saving aspects. Are those shipments generally handled on an airport-to-airport basis?

A As a general rule, yes.

MR. MEISER: That is all.

Thank you.

EXAMINER KEITH: Mr. Giffin.

BY MR. GIFFIN:

Q Mr. Leslie, the fourth paragraph of your testimony, you say "We extensively use other air freight services for relatively heavy weighted shipments of emergency nature, where their type and scope of operation meets our transportation requirements with economic advantage."

What do you mean when you say "transportation requirements"in that sentence?

A General time is the prime factor. If we don't have enough time for the most economic mode, we use air freight, but we may have a few days time.

Q You say you use air freight in this case for heavy weighted shipments. Do you also use air freight for light weight shipments of a major nature?

30 miles or less from Newark Airport."

Paragraph 4 reads, "For our emergency traffic we use air express predominantly." I would like to strike the word, "predominantly" and after the word "we",insert "often." The sentence would then read -- that part of the sentence would then read,"For our emergency traffic we often use air express because . . . ."

Paragraph 5, line 2, it says, "From 2 pounds to 200 pounds", and I would like to change that to read, "From 2 pounds to hundreds of pounds."

Those are the only changes.

Q With these changes, is this an accurate statement of facts?

A Yes, it is.

Q Do you wish to adopt this as your testimony in this matter?

A I do.

MR. QUINN: Counsel may cross-examine.

EXAMINER KEITH: Mr. Meiser.

CROSS-EXAMINATION

BY MR. MEISER:

Q Mr. Joy, do you know if Raritan or your shipping point near Raritan is within the airfreight pick-up-and-delivery area of New York-Newark?

A Yes.

Q What do you mean by ethical drugs? Do you mean medical supplies?

A These are drugs or pharmaceutical supplies or diagnostic materials that are not sold over the counter generally. In other words, they are either used by or prescribed by a physicia

Q You refer to the fact that you take those commodities to the airport because of the complete urgency. What happens at the other end? Do you arrange for a pick-up at the airport at destination?

A In some cases we do and in some cases we don't. There are instances where there is just no service anywhere. One of our products has to be administered within 72 hours of birth. It may be needed far back in the hills of Kentucky or some place where there is no service whatsoever, in which case the family may even come down to the airport to accept the shipment.

Q In which case what?

A The family -- one of the family may even come down to pick the shipment up.

Q You modified the first sentence of the fourth paragraph to state that for your emergency traffic you often use air express. I take it, then, you use other air methods as well for emergency traffic?

A Yes. We have been given the privilege of flying stuff on military aircraft. We have chartered light aircraft

to move a shipment. In other words, we just didn't have the time even to put it on a common-carrier type of aircraft to move it. We might use a busline if it is a short distance.

So, there is just a multiplicity of methods that we use, but in many of these cases we can't just turn it over to a carrier without knowing when it is going to move or hoping the carrier was going to get it on the next flight.

It has to move on a certain flight, and it has to be followed all the way through.

In some cases, we have used a freight forwarder to schedule a shipment, and they would then turn it over to air express for the actual move in order to get it on that flight because the flight wouldn't normally accept air freight as such on short notice of that type, and air express can get on the flight later and it can be guaranteed not to get bumped or anything.

Q Would you use the service of any other carrier such as an air freight forwarder if they could assure you of the same priority on the aircraft that you are referring to here?

A If I could be assured prior to the emergency situation that the service was going to serve. I don't think I would go on someone's say-so.

In other words, I would rather test a service like that prior to using with some non-emergency type shipment, because I can't gamble to that extent.

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Q I understand, but assuming a next flight out service were offered and in fact after your experimentation delivered, you would then use that service in addition to that of REA?

A I will use any service that does the job.

MR. MEISER: That's all. Thank you.

EXAMINER KEITH: Mr. Ryan.

BY MR. RYAN:

Q Mr. Joy, are you familiar with the term CASA?

A Yes, I am.

Q Would you describe what that is?

A CASA is an indirect air carrier. It is a cooperative. It is composed of shippers who move air freight, and it has two objectives. One is to obtain service which we feel might be better than exists by other means, and it also saves the shipper money belonging to this. It is like any other co-op.

Q Are you active in the CASA activity?

A I am President of it.

Q I wonder why that fact was not contained in your testimony.

A I really didn't think it was relevant, because this type of shipment normally would not move in that kind of service.

Q Does CASA engage in chartering aircraft?

A No.

EXAMINER KEITH: Mr. Bernhard, do you have any questions?

MR. BERNHARD: No questions.

EXAMINER KEITH: Mr. Giffin.

BY MR. GIFFIN:

Q Mr. Joy, have you had occasion to tender shipments to either air freight forwarders or the airlines directly?

A Yes.

Q Have you had any problems with getting emergency shipments moved out by these two?

A Yes, we have had. We at one instance -- this product that I mentioned before that had to be administered within 72 hours of birth, at that point, we did not have enough supply to stock hospitals or wholesalers or anything of that nature. A management decision was made to hold the complete stock in Raritan and try to serve within 72 hours of birth on request, but only emergency request. We used all the forwarders that we thought could handle that kind of situation, and we just had one disaster after another. In fact, we had forwarders not being able to get freight on a flight.

We had forwarders consolidating to Chicago for a Michigan delivery. It was just -- it didn't work out.

Now, subsequently we did work out an arrangement with a forwarder who would determine which flight the material should fly on, that being important because we had to know when it was going to be delivered exactly, and we had to notify by telephone the doctor or whoever it was that called it in,

and that situation did work out because the reliance for the transportation was really on air express.

Q You are saying this latter example was REA?

A Yes.

Q Did you make an effort before your previous experience to make arrangements with air freight forwarders for the handling of emergency shipments under special arrangements?

A Yes, we did.

Q And that didn't work out very well?

A That is right.

Q How about the airlines themselves, did you make an effort to work out something with them?

A We did, and we turned shipments over to the airlines direct in some instances.

Now, this was a case where we would deliver to the airline direct and we would have someone at the other end pick it up from the airlines. But again, this puts the shipment in the category of air freight, and if it did get transferred between airports, we had no one to police it. It meant we would contact the airline and make a plea, get the shipment moved to an airport and make a telephone plea to both parties at the other airport to transfer it and all that kind of thing.

We gave that up, it just didn't work.

Another great part of our express shipments are inbound, and they come from blood supply houses, and the shipments

come in to Newark. This is a case where we are gathering raw material now. The gathering of the raw material in some instances depends on our getting a great number of different types of blood in order to create a panel of blood. In other words, I think there are probably 10 vials in a panel. This panel has to be complete before it ia a part. The life of the panel depends on the earliest blood drawn, and from the time it is drawn until it is used is the critical thing, not from the time we turn it into a part, but the time starts to run from the time that blood is drawn from the donor.

In those cases, we can't gamble on whether somebody's freight is going to get on an aircraft. We use air express because it is a priority move, and we know that if anything moves after mail that air express is going to move, and get that on in-bound shipments.

We had worked with forwarders prior to this with not too good success.

Q Are you aware of whether your difficulty with the forwarders was due to their lack of priority on the aircraft, or don't you know?

A I am honestly unable to recollect, but it seems to me there was a great number of things such as them not transferring at an intermediate airport successfully and that kind of thing.

Q Have you had occasion to use the provision in the mail regulations allowing for special priorities for emergency

shipments?

A We do use priority mail and we use air mail, we use first class mail, special delivery. But on certain things we don't feel that we can just turn it over to someone and hope that they make it this time. We have to police the thing all the way through.

We have to know exactly when it is going to arrive at a destination airport.

Q Are you saying, then, with your service experience with REA that you have not felt it necessary to police that movement, or do you do it in that case as well?

A We do it in that case as well. We police the movement to the extent that we tell them what flight it is going to move on, because we may be shooting for a flight that may be an hour from now. We will tell them we want it to move on that flight and we will let the doctor know that it is going to arrive on a certain flight.

It may involve transfers. We try to police it all the way through, take no chances.

Q I take it from your testimony, then, what you are looking for in terms of service characteristics is the fastest movement, whether or not the particular shipment has a priority or not, but just the fact that it gets there the fastest?

A Say that again.

Q What I am saying is I assume it is unimportant to you

whether the indirect carrier you use has a priority or not, but the fact that the shipment gets there the fastest means that you can find, is that right?

A That's true. If I can restate what you think you are asking me, the first thing we are involved in is trying to get this thing moved as quickly as we can.

The second thing is that we want all parties to know what that move is going to be. In other words, what flight it is going to be on and how it is going to move.

It may move like I say by busline or it may move by private plane, whatever. But the important thing is that it does move as scheduled and that it is going to be scheduled from door to door.

Q So, you are saying the second characteristic is the ability of the carrier to have complete control and know where the shipment is at all times?

A Yes.

MR. GIFFIN: Thank you.

EXAMINER KEITH: Mr. Meiser.

BY MR. MEISER:

Q Mr. Joy, in response to questions by Bureau Counsel, you mentioned two instances where you used forwarders, I believe the first one of which was unsatisfactory, and the second one I take it was satisfactory. Then in response to Mr. Giffin, you said it was REA's service, but didn't you deal in that

second instance with the forwarder and not with REA?

A Actually, what the forwarder did was something because of the volume we couldn't do in our own Traffic Department. What that meant was we would go through the airline guide and look up the flights we wanted . We also put a supply down at Newark Airport. And as that supply became depleted, why, we would restock it there.

So, we even tried to eliminate the running time between the plant and the airport.

Q You did deal with a forwarder, not with REA, and the forwarder in turn dealt with REA?

A I think we were using the forwarder not as a forwarder but as a shipping agent for us.

Q Who did you pay for the shipment?

A We paid REA for the shipment.

Q So, the forwarder was acting as their agent, in effect?

A In effect. It was not really acting as a forwarder as we know it, someone that consolidates air freight that is moved by the airlines.

MR. MEISER: That's all.

EXAMINER KEITH: Do you have any redirect, Mr. Quinn?

MR. QUINN: No, sir.

EXAMINER KEITH: You may be excused.

(Witness excused.)

EXAMINER KEITH: At this time, we will take a

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freight forwarder or via an air carrier to find out which gets there fastest?

A Not as a survey, no.

MR. RYAN: Thank you.

EXAMINER KEITH: Mr. Meiser?

BY MR. MEISER:

Q In the paragraph numbered 2, the third sentence, you refer to movements of medical emergencies.

Do you use REA's pickup service in those instances?

A No. We use their delivery services. I might add at our plant which is located about 35 or 40 miles from the New York City airport, we deliver to the airports all of our airfreight shipments to all air carriers.

Q And also all air express shipments; is that right?

A That is correct.

Q You say you do use the delivery service of air express. Do you use it in all instances?

A Yes.

Q What is the nature of the commodity that you are talking about here that would comprise medical emergencies?

A One of the products that would be involved in medical emergencies, we have botulism serum which is used in cases of food poisoning. We have a rabies' vaccine which is used in cases where a child or somebody is bitten by a rabid animal. We have also a gas gangrene, which is a serum administered in

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severe cases -- a person involved in a severe accident, he is under shock, as an emergency treatment.

Q It is your testimony that you never get a situation where, say, you get a call from the West Coast requiring any of these commodities within five or six hours with a request that you put it on the airplane on the East Coast and they will be there on the West Coast to pick it up on the West Coast because there isn't time to do otherwise; you never get that situation?

A I didn't mean to imply that. We do have situations like that, yes.

MR. MEISER: Thank you.

EXAMINER KEITH: Mr. Giffin?

BY MR. GIFFIN:

Q On your medical emergency shipments, do you use REA exclusively for those?

A No.

Q What other forms do you use?

A We use all forms of air transportation.

Q So you use airfreight forwarders and direct air-freight?

A We would give them consideration.

Q What proportion of those do you use REA and what proportion the others?

A I couldn't give an answer to that. I would say this

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other priorities which have been established before us.

Q Have you made any financial projections as to the profitability of such a service?

A The profitablility, we haven't figured statistically. We estimate though an increase as far as gross revenues, and this again would not reflect what the net would be after the increase in gross. But we do have an idea of what our increase would be.

Q Has the question of air express ever been acted upon by the Board of Directors of Trans-Air?

A Acted upon in the sence of formal resolution that we should or should not have it in that sense?

Q Yes.

A I would say there is no formal resolution that we should or should not have it. But it is the belief of the Board in view of the fact that we submitted the exhibits that they are supporting official management's position.

Q In operating air express, would you consolidate express or handle it on a first-flight-out method?

A First flight out?

EXAMINER KEITH: Mr. Wolfe, while you are on this paticular line, I wonder if you would ask the witness if they would comtemplate operating in the same manner that REA does, that is, by reaching agreement with the airlines, or just in what way do you envision this authority would take so far as

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your company is concerned?

THE WITNESS: Well, if we were elevated to the status that we did have the operating authority, I would say that we would like to come to some type of agreement with the carriers basically allowing us certain privileges which we think we need now to operate this type of service, namely --

EXAMINER KEITH: What would those privileges be?

THE WITNESS: Delivery time to the airlines, the cutoff time ruduced substantially, let's say, from the time they require regular commercial shipments now; better recovery at destination so far as the basic shipment itself; and better facilities for tracing or obtaining a status report as to where the actual location of the freight is piror to Trans-Air or the Trans-Air agent taking possession of it.

EXAMINER KEITH: Would you send this yourself under a single waybill all the way from origin to destination?

THE WITNESS: Yes.

EXAMINER KEITH: Would you comtemplate that the airlines would have a tariff under which you would operate this service?

THE WITNESS: I would say on the situations that exist today, I think we could live with existing rates. It would be a difficulty in certain areas, but we could live with existing rates and would not require a special provision in their tariff.

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EXAMINER KEITH: You understand REA has an agent agreement with the airlines, is that what you have in mind also?

THE WITNESS: I don't really know if it would have to take the form of an agent agreement, but I guess if we wanted some type of cooperation, we would require as far as the delivery times and the pickup times and the tracings, there would have to be some type of agreement, then, I would say, yes, we would favor that.

EXAMINER KEITH: Go ahead, Mr. Wolfe.

BY MR. WOLFE:

Q In line with the questions by the Examiner, do you think you should have pricing freedom in such an arrangement, that you would make the rates to be public?

A I would say within a range, yes.

Q Referring you to TAFS-17, what you amended this afternoon, do you have any work papers supporting these average transit times?

A No, I don't, not with me. Not now.

Q What was the source of this information?

A Just the general records that we keep within our own organization as far as waybills, manifesting, and signature from consignees for delivery time of freight.

Q Do you look at all your waybills?

A No. We took what we thought were the points that

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Q Is it also designed to improve the service in terms of elapsed time?

A Naturally, yes. As I say, it is a very sharp improvement. It is a quality of service that has never been performed, to my knowledge, by -- I can't think of any carrier that has provided this quality of service, the standards of which we have now established starting today.

Q I have a little difficulty in distinguishing that service from your expedited service for which you did file a special tariff. As I understand that, that was an immediate -- that provided for an immediate pick-up and delivery at a premium, I think -- I think it was something like $10 for the pick-up, $8 for the delivery?

A Yes.

Q How is this service distinguished from that service?

A The service that we have had in effect between a limited number of cities, the same day service to which you refer, revolves around picking up a shipment today and delivering today, same-day service.

It requires a complete and separate dispatch of a vehicle, in most cases, to make the pick-up, an immediate run out to the airport on a fire engine-dash type of arrangement, immediate boarding of the aircraft, the first one going, and communications to tie the whole thing together, and again meeting the aircraft as it arrives, virtually meeting it --

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it is met by the airline runner, and the minute it hits our terminal at destination, he has to grab the shipment and put it on a truck or vehicle and make immediate delivery. It is pick-up and delivery on the same day, okay?

Q Yes.

A Now the new service covers a much broader spectrum, and involves no extra charge. It involves a picking up of shipments in major cities within one hour from the time that we are called. It involves more direct dispatch to the airports so that greater use can be made of daytime air lift in the belly compartments of those aircraft. And it involves early tomorrow morning delivery, not later than 10:30, in major cities.

If the shipment does not arrive, for whatever reason, the weather, or destination, or transfer delay, or lack of lift, or whatever, if it doesn't arrive at destination, let's say until 1:00 o'clock tomorrow afternoon, for some reason, then our new standard revolves around making that delivery within three hours after arrival.

And this pretty much will involve another special truck. In other words, we are investing very heavily in service, and we are betting that we are going to increase our shipments per stop. And our total volume.

Q One thing I didn't understand in that statement was to utilize the daytime belly capacity, if the pick-ups are made

TESTIMONY OF MR. DEAN, SHIPPER LEAGUES

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Q At the bottom of that page, in paragraph 7(e), you state that one of the reasons for the importance to your company of Air Express is complete, overall supervision during transit. What does that mean?

A It means that where we have animals in transit, we will have REA pick them up, see that they are delivered to the airlines, and then in turn meet the airplane, amke the delivery at the destination. It means that we do not allow transfers to other carriers; it means that it stays under the jurisdiction of one carrier, REA Air Express.

Q Now is that correct? If you are shipping in a market which requires you to use the services of two different airlines, you are shipping by different carriers; are you not?

A If we use two airlines, yes.

Q providing you retain Air Express services, does it make any difference to you whether it is provided by REA or somebody else?

A No, it wouldn't make any difference.

MR. RYAN: Thank you, sir.

EXAMINER KEITH: Mr. Meiser?

BY MR. MEISER:

Q I am interested in your statement, earlier statement, that indicated you use Air Express services primarily for next-day service; is that correct?

A That is one of the reasons, yes.

Q And when you require same-day service, you make some other arrangement, as I understand it; is that correct?

A In many instances, yes.

Q Would you tell us a little bit more about what kind of arrangements you make for same-day service?

A Yes. I will be glad to do that.

We operate very closely with the airlines out of Philadelphia, and where we cannot make deliveries on the other end, where we will turn over the shipment to the airlines, we will use ordinary airfreight, and then we'll make our own arrangements for pickup by special messenger, and you can name a lot of concerns that will do this for us.

Q Do I understand that in these situations, you, yourself, tender the shipment to the carrier at the airport?

A That's correct. That's correct.

Q And the airlines cooperate in giving you, in effect, a space on a given flight in those instances?

A Yes, I think we get it because we are in the drug business.

Q On page 2 of your statement, I would like to clarify what you mean by the phrase "subcontracting REA's pickup and delivery service." You don't mean to say, do you, that REA has its own salaried employees at every point that it serves out there in the hinterland; do you?

A I am not that foolish, no. I would say that we only use -- we try to use good judgment when selecting any carrier to deliver our drugs, whether it be REA, National, Eastern, any of the other airlines.

Q Would it be fair to say, then, that what you are concerned about in those situations is having a single company handle your traffic to those offline points under a single air waybill with single company responsibility for the shipment?

A Yes.

Q Regardless of whether they do it with their own employees or make other arrangements, is that correct?

A Well, no, that isn't correct. I would prefer to have the same carrier pick up, make arrangements for transportation with the airlines, and make delieveries so that I'll have more of a lever against their performance. Where you are speaking over a million dollars a year for transportation, I think that by having a lever that you can use against the carrie I think you get better performance.

Q How does it give you a better lever? How do you get better leverage over the carrier?

A Well, I think for a number of reasons: No. 1, primarily, if they don't perform, I'll take it away from them. I'll take the business away from them and give it to somebody else.

Q Do you have better leverage where there is single

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* * *

Q Is it fair then to characterize what you just said as operating some type of procedure whereby the shippers in the remote areas would contract themselves with independent truckers or they themselves would truck it to a medium-sized airport for shipment by the airlines?

A Yes, it would be an operation not unlike the forwarder operations today, some of which are effective and some of which are highly ineffective. But it certainly would not be anywhere near the quality of service that is now being provided.

It would be a catch-as-catch-can, in many situations

Q I believe another REA witness, Mr. Dravis, or someone else, testified that REA was embarked presently on a program of consolidating their offices and closing some of their offices at these smaller points.

So how can you then distinguish between what REA is doing today under its exclusive express authority and what it would do if it lost this exclusive express authority.

A Very easily. The types of offices that are being closed today are those that were referred to yesterday by counsel for someone or other. I believe that Monterey was a case in point, or one of the cases in point.

There could be other ones. For example, a place like White Plains, New York, could be closed very easily as a

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MR. BLUM: No further questions.

EXAMINER KEITH: Mr. Bernhard.

BY MR. BERNHARD:

Q It is hard to know where to begin.

Let me clear up one thing in your most recent testimony today which I didn't quite understand. Where you mention Charlottesville, Monterey, Rhinelander, are you talking about the possibility of serving Charlottesville out of Washington today?

EXAMINER KEITH: That was just an illustration.

MR. BERNHARD: I understand, yes.

Is that the type of thing you are thinking about doing now? And with respect to Monterey, Rhinelander, are those your present thoughts?

THE WITNESS: No, not mine.

BY MR. BERNHARD:

Q I mean the companies, of course.

A Yes. All right, I think the question, in the framework of the question, it was if you closed small offices, how would you operate, basically?

Q Yes.

A And I think as the Examiner said, these were examples. Not, we are not setting out to close any airport operations per se. However, we have a surface consolidation program under way which in effect simply means that we are

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substituting truck service from some of these small cities into a more important city. But what I said was if we do close a Charlottesville or a Rhinelander, we put in as good or better surface arrangements to go into a larger city, and if anything, the air service will be improved.

Q .Well now, my question is, is this something you as the vice president, air service, are contemplating doing at the present time?

A I am not personally, no. I am comtemplating expandir the air express operation into many more cities than we have now with our own personnel at airports.

Q Are you aware that under the air express agreement which is now in effect and does not expire until June 30, 1972 the express company is obligated to route traffic between all points served by airlines under their certificates, includ Charlottesville's and Monterey's and Rhinelander's, and REA is obligated to privide pickup and delivery service from such airports.

Are you aware of that?

A Yes, I am aware of that.

Q Then there is no basis for discontinuing such a service under the existing agreement, is there?

A Well, there could well be, yes. If our volume develops to the point where we can't provide the quality of service as necessary, I see no conflict there whatsoever in

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Q Mr. Bernhard pointed to the provision of the air express contract under which apparently it is provided that REA is obligated to tender air express shipments to the nearest airport, is that correct?

A That is correct.

Q On the basis of your answer to this question, to both of these questions, would you not say it is a fair statement that there are requirements imposed upon REA now by virtue of the concept and the REA Express agreement which does not offer as expeditious service to the shipping public as you feel could be offered under a different system?

A Under the present contract, yes.

Q In connection with your statement that you would move freight in these instances or would consider moving freight by ground transportation to a hub airport, where you feel you could get as good or better air transportation service for the shipper public by performing it in our way, I assume you were reiterating that statement; is that correct?

A In some instances, yes.

Q Doesn't that sound strangely, to you, Mr. Byrne, like the operating techniques of a good large airfreight forwarder?

A No.

Q Doesn't Emery operate in that way, Mr. Byrne?

A No. I think you are jumbling a couple of points.

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volume would move to so-called off-line points.

Four, the separate air cargo sales force would constitute about 50 men and/or women and 34 air freight facilities.

BY MR. MATHEWS:

Q Mr. Kerrigan, have you examined Emery's Exhibit R-26 dealing with the alleged closing of various offices of REA?

A Yes, I have.

Q And did you prepare REA-R-1300 in rebuttal to that exhibit?

A Yes, I have.

Q Would you please explain for me briefly how you made the analysis that now appears in REA-R-1300?

A We took Emery's R-26 and assigned personnel in my department and the operations department in New York to check each entry that was crossed out by directorees and other information available in our headquarters, as well as personnel checks through the regional managers responsible for the cities that will list it. As a result, of the 2000 listings crossed off by Emery, our analysis shows that REA as of October 27, 1971, REA still maintained a physical office, a physical terminal, at 1520 of those communities.

Q Roughly 1500 out of the 2000?

A Correct. The 510 other offices, the physical

plant has been closed since the original submission in April.

In addition, where possible -- and I believe in all cases -- we showed in the column the type of office involved and whether there was any change. If there was a change we put brackets, parentheses, around the type of office and showed now what other physical office served that community.

We made further checks of telephone books and we have a couple of examples here.

Q Now, just so I understand the method that you used, Mr. Ryan yesterday was raising some questions about points like Monterey, Rhinelander, Merced. Perhaps you could explain what you did.

A Excuse me. I have it written, but I know it. Merced was closed August 1971. That is, the physical office was actually closed. All of our service has remained the same. The traffic for Merced is now brought from Fresno. The same driver that served the community is now serving it. He picks up his shipments at the Fresno office, goes to Merced, delivers in the same area, goes to the airport, picks up traffic from the airport, and also leaves traffic there. At the close of his tour of duty he returns to the Fresno office.

Monterey. Monterey was closed I believe August 9, the physical office. It is now served by our physical office

* * *

Q Could you read it into the record, please.

A To simplify the task, there would be four columns. The headings of these would be Business Days, Airborne Freight, Shulman, Wings and Wheels.

The next line would be"One, 21.1 percent, 16.17 percent, 21.1 percent"

The next line, "Two, 63.4 percent, 52.7 percent, 50 percent."

In other words, in the second business day, that is the -- those are the percentages of the shipments which were delivered.

MR. BERNHARD: I don't understand what you're correcting.

THE WITNESS: This was a request by the Air Freight Forwarders, Mr. Bernhard.

MR. BERNHARD: Oh, all right.

THE WITNESS: "Three, 8.9 percent, 22.2 percent, 16.7 percent."

I am in the fourth line, left-hand column. "2.2 percent. Under Airborne, no entries on the next two columns.

Five, fifth business day, no entry on Airborne, 2.8, 5.5.

Six, the sixth business day, no entries at all.

Next column, "Delivery unreported."

MR. MATTHEWS: Next line?

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A. I can't specifically say yes or no. I would assume we do, because it has a branch package agency. That is our policy.

Q. Is it not possible that in fact there is pickup and delivery service there by truck that goes only once a week?

A. That is possible, sir.

Some communities we may not serve daily, but I do believe we provide pickup and delivery service where we have a branch package agency.

Q. So in some of these communities, if you want a package picked up, you have to wait a week before it happens, is that right?

A. Yes, but I don't know the number of those.

Q. Going back to Connecticut, do you know if REA purports to have pickup and delivery service in Richfield?

A. In Richfield?

Q. Yes.

A. Not based on the list in front of me. I can't tell that.

Q. The answer is, you don't know?

A. I can determine the answer, if you wish.

Q. That would be helpful, if you would.

Could we go now to the STate of Washington.

A. I am sorry, so I am not mistaken, Mr. Ryan, I owe you an answer on Richfield, Connecticut.

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Q Well, that can be proved by reference to the atlas, so I think we will take it as accepted for the moment.

How much service can you get and how fast service can you get if the truck has to go 350 miles each way?

A If we are providing service on pickup and delivery at a distance of 350 miles, it is a surprise to me, Mr. Ryan. I would not believe we are providing pickup and delivery service at Chewelah under those circumstances.

Q How about Colville?

A My interpretation of our notes are that we would be providing pickup and delivery service at Colville.

Q Which is also 350 miles away from Seattle.

A I am not arguing a point with you, Mr. Ryan. I find it difficult to accept.

Q Yes, so do I.

I take it, then, that we cannot determine from this exhibit how many points listed have pickup and delivery service, and how many do not, can we?

A It is not one of the questions the exhibit purported to show, Mr. Ryan. The answer to your question is we can't, we did try.

Q Yes, and do I correctly conclude that so far as you know, none of your exhibits show the extent to which you provi pickup and delivery service throughout the country?

A I believe one of our exhibits do, sir.

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Q Could you tell me what that is?

A You will have to give me a moment to find it.

REA-1215.

MR. MATHEWS: REA-R-1215.

THE WITNESS: REA-R-1215, yes.

BY MR. RYAN:

Q I don't see any words in this exhibit saying that you provide pickup and delivery service, here.

A That is -- I had the exhibit prepared, Mr. Ryan.

This is where we provide services, that is, pickup and delivery service by number of communities, by population size.

Q That number is 678.

A For example, in the first group, 25,000 or more.

In the grouping of the cities, we had 678. We provided pickup and delivery service at 677.

Q And it does not tell us the number of cities in the other groups where you provide pickup and delivery service?

A Yes, sir.

Population group 10,00- to 25,000, 978 cities, REA is providing P&D in 950.

Q I am sorry, I may be looking at the wrong exhibit.

A I am sorry, page 3 of 4 of REA-1215.

Q Beg your pardon.

And has the accuracy of this exhibit been checked

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to reflect the revisions you made in REA-R-1300?

A. Yes, sir.

Q. And are there any changes in R-1215?

A. Not through the date of the filing -- not for the date of the filing, sir. I had this prepared in my office, along with this 1300.

Q. The date of the filing of REA-R-1300?

A. I am sorry, no, for the date of the filing of REA-R-1215.

Q. And so, therefore, it has not been checked or revised to see if it accurately reflects the changes in R-1300, has it?

A. No, sir, it has not been checked through October 27th.

Q. All right.

Are you charged with the implementation of the new program which Mr. Byrne described to us, that began on November 1?

A. I am sorry, sir, you would have to identify the new program.

Q. Did you hear Mr. Byrne's testimony?

A. The air express service?

Q. Yes, sir.

A. No, sir, that is operations. That is not a new service, if I may add.

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Q Well, it is an extension of service, if you will.

A It is an improvement of our pickup and delivery service.

Q Yes, uh huh. And you don't know any of the details of where it works or how it works, do you?

A No, sir.

Q All right.

Could we go to Exhibit IR-11, please.

A Yes, sir.

Q Now here you suggest a possibility that the CAB -- in the last paragraph --

EXAMINER KEITH: IR-11?

MR. RYAN: Page 4.

BY MR. RYAN:

Q There you suggest that the CAB require each entrant into air express to provide exactly the same territorial coverage, including off-line service and commodity coverage, as REA Air Express.

Were the board to do that, how would it find out what territorial coverage and what off-line service REA Air Express is now providing?

A Not begging words, Mr. Ryan, but we asked the Board for that. I did not catch your first word. But in any event, at this point in time, or any point in time, I can tell you as of that day what the service is REA is providing

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throughout the country.

Q Well, I respectfully suggest that that may not be so, because I understood you to tell me that you had not checked the other points which Emery had not crossed off, and therefore, you thought -- I thought you said that -- that you did not know for sure whether there had been any changes in those cities or not.

A I am sorry, Mr. Ryan, I did not characterize it that way. My answer, to try to be as specific as I may, is at any point in time, I can develop for you or for the Board, what REA's service is in the country.

It is a changing situation.

Q Yes.

On page 5 of R-11, did you derive the 30 percent loss of air revenue figure?

A Yes, sir, I did.

Q Could you tell me the mechanics whereby you reached that percentage?

A Yes, sir.

It is a judgment factor on my part that we would lose approximately 75 percent of the volume we now handle between the top 500 city pairs. Those are our city pairs as reported in this case, which represent about 36 percent of our volume.

Q That judgment on your part was based on what

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industry, and -- at least we believe that because we left the selection to the shipper.

BY MR. HAFFER:

Q All right.

Now, in view of the fact that there were 90 from Airborne, 36 from Shulman, and 18 from Wings and Wheels, while there were 144 for R . and Emery, isn't it correct that not all forwarders were matched against all other forwarders and in REA between all pairs of points?

A That is correct, sir.

Q In view of that circumstance, could we agree that at the very minimum, apart from the other problems involved, this test does not purport to test in any way the validity or effectiveness of the service of the various forwarders matched against one another?

A I believe I agree with the question in that it does not match the service of one airfreight forwarder versus another airfreight forwarder.

But in my opinion, it gives a good match between the three modes.

Am I responding?

Q Well, what you are saying, I believe, it matches REA against the three forwarders?

A Matches REA againts the airfreight forwarders' industry, matches REA Air Express against the airline direct

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MR. HOFF: Yes.

EXAMINER KEITH: If you say yes, all right.

BY MR. HOFF:

Q Yes, was the question, not the answer.

A It is a consideration. Our service standards are first.

Q Well, what I am driving at, these transfers are not dictated by the fact that you cannot get a through-flight from Boston to San Francisco; is that correct?

A No. Our operational requirements say to use a through-flight first, if it is available.

Q But you would, would you not, send shipments from Boston to Chicago for the purpose of making a reconsolidation?

A Yes, I would say that a high percentage of your traffic in any direction would be transferred at one of the major transfer points which I think of as Chicago, and then Atlanta, and Dallas, hubs for great sections of the country and a great deal of freight is consolidated in those points for second hauls.

Q It is shipped to those points for the purpose of reconsolidation?

A Yes.

Q Right.

Mr. Haffer asked you about the billing procedure. Does Airborne submit to the airlines a statement

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BY MR. GIFFIN:

Q. Now, if I can refer you to AFFA-IR-16, which you co-sponsor, please?

A. IR-16?

Q. And specifically page 3.

A. Yes.

Q. In the first paragraph under Section B, the first sentence indicates that you believe, along with the other airfreight fowarders, that the public would be willing to pay a premium rate for a highly expedited service.

I wondered if you could tell me the basis for that statement, Mr. Ryan?

A. Yes, I think we have quite a bit of experience in that. It is not quite the same, but, for example, for many years, a great part of the movement of freight expeditiously is in the ground service.

We have in our tariffs now, special pickup and delivery charges that I would say, to characterize them, are four to five times normal, the normal charge.

Under critical conditions, the customer has proven to be willing to pay those charges.

Now, those extra charges only give him a special ground service. It seems logical to us that if you extend that to a priority or special handling technique within the airline terminal and on the airplane, guaranteeing next

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expedited service is available to the general public. I can see it being handled either way. We already have agents in the minor cities that we could convert to outbound generating commissioned agents for Airborne if the rate situation was attractive for this type of shipment.

In addition, however, in a small town, there would be nothing to prevent, in a critical situation, the shipper himself bringing the shipment to the airport. I think you would find that actually in the small cities, that often happens.

Q Now, also indicated in this Exhibit is the fact that it is the airfreight forwarder's opinion that the secondary markets have not been fully developed.

My reference is specifically to page 6, where it indicates that REA has failed to develop secondary markets.

EXAMINER KEITH: Is this something Mr. Currier is going to comment on, or is it this specific witness?

MR. GIFFIN: I am just curious to know with respect to Airborne, what their plans are for increasing service in secondary markets if they were on equal footing with REA in those markets.

EXAMINER KEITH: All right.

THE WITNESS: Yes.

Our basic plan -- number one, openign new stations is not a new thing for Airborne. We open them rather rapidly.

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We have a system all set up where all the requirements, which is largely instructions, paperwork, manuals and the communications setup, are all ready to go. We open a station and the main thing usually is to find a physical facility.

I suspect we would expand the number of manned stations that we have under those circumstances and we would convert as many as possible or are willing, of our destination agents who are perfectly competent to put a shipment into the air, and then our system would take over.

They are currently delivering airfreight, they are familiar with the whole pickup and delivery arrangement.

We would then supply them with our particular manuals and communications system, and that is how we would expand into the smaller cities.

BY MR. GIFFIN:

Q What would you expect the source of new traffic there to be?

A That would be -- I think that is so tied into what the eventual rate structure would be, that I would be hesitant to guess.

You are asking what volume?

Q No, I am asking the particular sources of traffic that moves now by surface freight or surface express, or present air express traffic, or what do you envision as being the

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assisting this record, could you state very briefly what Airborne's practice is with respect to holding for consolidation?

A. Airborne's practice would be never to hold consolidations in order to achieve the next higher weight break, if that is the implication.

And to my knowledge of our worthy competitors, their policy is about the same.

In a typical station, all main lanes are preplanned. That is, we have assessed each lane that we use regularly, and tried to pick out the best flights that we could get space on. In some major lanes, that may be several flights, in secondary lanes, it may be the best flight, and a number of considerations go into that: Its own particular operations pattern, as far as we are concerned, the hour of the day. But our general pattern of operations is quite regular. That is, we use the same flights day after day, unless something unusual happens.

Now, we move those flights -- if the shipment is picked up and available for that flight, it moves regardless of the number of other shipments we have with it. That is a matter of hope that we get many shipments, and we work very hard to get as many shipments as possible. But that does not dictate the flight pattern in any sense whatsoever. Our flights are picked to provide, wherever possible, next morning

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delivery. And our operation is not based on holding for additional weight, that type of consolidation.

Q. A question was asked by Mr. HOff yesterday with regard to your shipping to certain points for reconsolidation, or for movement beyond these points without consolidation.

You indicated in response to his question that some of these points, for example in the movement to or from -- from New York westbound, or from the West Coast eastbound, would be Chicago, Dallas and Atlanta.

What is the purpose of Airborne's reconsolidating, or would you call that breaking at these particular points for onward movement?

A. Breaking would be.

Q. Is that it?

A. Breaking bulk, that might be.

Q. Is that the phrase customarily used?

A. A number of -- I think it varies a little bit.

Q. What would Airborne's purpose be in doing this?

A. The reason I mentioned those three points is that they are large transfer points for anyone in the air business, simply because of the way the schedules, the route structures of the airlines are constructed.

Now, for example -- and I am sure -- perhaps we could find an exception to this, but if you were on the East Coast, whether it be New York or any of the major cities, if

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shipper in this case, let's say, has no connection with, and probably does not even know the identity of the connecting carrier. Hr is remote from him. So, we must handle the claim with that carrier in the shipper's behalf, and we do, in that case.

Q So you are, in effect, the one the shippers look to for the entire movement?

A From the standpoint of responsibility, as opposed perhaps to liability, that is so, yes.

I might point out if it is relevant that the recent approvals by the Interstate Commerce Commission of Surface Forwarding Authority for what they have characterized as intermodal forwarders for several of the applicants, including ours, here in this proceeding, will enable us to take in all of the shipments, including these that were just being discussed here, under our own tariffs and our own liability.

Q That would be on the basis of a combination of air and surface freight, is that correct?

A That is right.

Q Now, if the air express system as it is now operating were discontinued, and REA became and airfreight forwarder, what would your reaction be in terms of the scope of your operation, in terms of points, number of points served? Would that change?

sw-11

What is your basis for your belief that shippers are willing to pay a premium rate for a priority service?

A. We have also had experience in that particular area with respect to the special pickup and delivery price that they are willing and have paid for an expedited or a different, special service.

It also has to do with a special handling charge which WTC presently charges, which moves this particular shipment out of its main traffic flow or main traffic patterns of WTC.

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A Well, we are already in the secondary markets and the tertiary markets, if you are referring to the shipments that move from our existing primary and secondary markets into those areas.

There is a substantial amount of business that moves into those areas.

Now, as far as generating points at a secondary or a tertiary market, whatever that definition might be, we at the present time could, as Airborne has suggested, convert our agents into generating stations. We would also, though, question the cost element of so doing and, also, more specifically, the market.

It is hard to conceive that in all of the tertiary and secondary markets that are being discussed here that they have that generative power, or the volumes that would require that type of service.

Q Can you tell me what percentage of your traffic moves from origin to destination under your air weighbill?

A A hundred percent of our shipments move between the tariff points, move on WTC airbills between the points named in our tariffs. For shipments having a prior movement outside of the pickup and delivery area or going beyond the pickup and delivery area, they are moved on the interline carriers' paperwork. However, the billing or invoicing done by WTC is done on WTC paperwork with the charges of the other

carriers shown as advances.

The only exception to that is in the event that there are cash customers, and we bill on the other connecting carrier and advance our charges on that basis.

Q I assume that for all your shipments you would handle the claims of the customers for damage or loss?

A Yes, we assume responsibility for those, and subrogate where necessary.

Q That would include the cash customers?

A Yes.

Q If the air express system as it is today were eliminated and REA became an air freight forwarder under the same circumstances as exist for air freight forwarders today, and assuming that the airlines offered the same type of rates for air freight that they offer today, as well as offering a priority rate for high expedite service, what would you expect WTC's system to look like in terms of change, in terms of extra points that they might serve?

A I would not foresee, at least initially, any substantial change in the service patterns or the number of stations operated by WTC.

I would suggest, however, that a better competitive position vis-a-vis air express would open up new markets for us and in so doing create a reaction on our part to the extent that we would probably expand faster than

TESTIMONY OF MR. HECTEMAN, AFFA

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mm11 1 a station, or do you look at the whole system?

2 A. Similar to the previous witness, we do have some
3 service stations primarily for inbound traffic because that
4 point has a good deal of inbound traffic, very little
5 outbound. So it is rather difficult to draw generalizations.
6 Usually we try and put a station on a sound
7 economic footing on its outbound, only.
8 Q. Is your traffic with respect to what goes
9 under your air waybill and the circumstances similar to those
10 of the other witnesses?
11 A. Yes, it is.
12 Q. You handle claims for loss and damage throughout
13 the movement?
14 A. On the beyond movements, you mean?
15 Q. Yes.
16 A. Yes, we do.
17 Q. If REA were not in the picture today, and all
18 there was was airfreight forwarders, what would your changes
19 be in terms of points served, unusual commodities carried,
20 your participation in the small package shipments?
21 A. I think that this would depend very heavily on
22 the -- our major cost item, the airline rates that were
23 charged to us.
24 Q. If we assume the same rates as there are in effect
25 today?

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TESTIMONY OF MR. FRENCH, EMERY

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questions?

MR. BERNHARD: You can let REA go first, if you want.

MR. WOLFE: I don't have any questions.

MR. BERNHARD: I think we might have a question.

EXAMINER KEITH: All right.

CROSS EXAMINATION

BY MR. BERNHARD:

Q What is the cost of the EMCON system you are using?

A When you ask me the cost of the EMCON system, it encompasses some things that are also part of our old original system, like message switching, so the unique part, including message switching, is approximately $3 million a year. That is what we pay each year.

Did you ask the cost going in or the cost of continuing?

Q Supposing you were putting in this system from scratch, what would the total cost be?

A To get it on board, so to speak, Emery Air Freight spent about $3.5 million to get it to where it was operational.

Q And thereafter it is costing you #3 million a year to keep it going?

A Yes, sir.

But I made the comment that that included message

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beyond your tariff points via motor carrier?

A. Off-line service, yes.

Q. Are any of the points to which you use these motor carriers airport cities, although not in your tariff?

A. That is conceivably so, yes.

MR. WOLFE: No further questions.

EXAMINER KEITH: All right.

Mr. Giffin?

BY MR. GIFFIN:

Q. Mr. Ermer, do you provide services under a speical arrangement, other than your normal routine operations for expediting shipments?

A. We do.

Q. Similar to the ones described this morning?

A. I was not here this morning.

Q. Could you briefly describe them?

A. I could give you a for instance, if that would be helpful.

We handle shipments for customers, for example, that will be tendered to us in the morning in L.A. and must be in New York for an evening showing, or whatever. That would be film, in most instances. We use an NFO service provided by the airlines. We pick it up and deliver it within a matter of hours.

MR. BERNHARD: I did not understand. What kind

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of airline service do you use?

THE WITNESS: Next flight out, or the baggage. I think you referred to it the other day as your baggage service.

MR. BERNHARD: I just did not hear what you said.

THE WITNESS: Some airlines call that NFO or next flight out service.

MR. GIFFIN: What airline is that?

THE WITNESS: United, American, Delta. Most of them follow suit. Those are the ones we use.

BY MR. GIFFIN:

Q Is this for a particular customer on a regular basis?

A Small shipments. It could be for any customers, not for a particular customer. We also make particular flights.

EXAMINER KEITH: Did I understand --

THE WITNESS: Specific flights during the day, if we have a customer that has an urgent requirement to get freight into a particular airport. We have two small units in Manhattan, for example, that we float and that we are able to use and break away to go to an airport to provide this type of service for some of our accounts that require it.

EXAMINER KEITH: Did I understand you to refer to film from the West Coast to the East Coast?

THE WITNESS: Yes, sir.

EXAMINER KEITH: Is that one of the types of things

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market or would your participation not change?

A We handle a lot of packages under 100 pounds now. We certainly are interested in this market at this time. We solicit against REA, air express, for the same business.

Q What is your position with respect to service provided in secondary points? Do you expect, if you were going to operate a new station, that that station in the near future, after a startup time, would essentially pay for itself or do you look at the profitability of your business over the entire system rather than individual points?

A We look at the profitability over the system because we have stations now that are supported by stations, so to speak, that are profitable -- the fact that we have a combination of the two makes one profitable enough to support the others.

MR. GIFFIN: That is all I have. Thank you.

EXAMINER KEITH: All right. Mr. Wolfe?

MR. WOLFE: Yes, sir, I had a couple of questions raised by Bureau counsel's questions.

BY MR. WOLFE:

Q To clarify, assuming that REA was not an air express carrier but that the rate -- assuming, for instance, it was a forwarder and the rate situation, however, for the forwarders, was the same as it is today. Would you carry these unusual commodities?

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A The answer is no.

Q How about parakeets?

A The answer is no.

Q Isn't it tru since you have handled them on the airlines in the past, that these types of creatures require very special, expedited handling, certain temperature controls, things of that nature?

A My answer to that would be that they require a certain degree of care. We used to fly planeloads of baby chicks on C-46s to Puerto Rico. We didn't make any special provision to cool or warm the aircraft. We had to keep the boxes at body temperature, I think 103 degrees on baby chicks. There is twenty-five in a compartment, a hundred in a box, and if you packed the boxes too tight then you have a problem. They are susceptible to pneumonia. But, in fact, there is no reason why an air freight forwarder couldn't receive a dozen boxes of chicks and take it to American Airlines and they in turn take it as they do for air express to California. They are the ones that provide the protection.

For the most part, people who ship animals and baby chicks in any quantity, they usually pick them up and deliver them to the facility at the airport. So, you see, the exposure is basically the same, physically, regardless of who might handle them.

Q Does Profit By Air containarize its shipments?

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Q What do they do today, Mr. Currier -- do they reserve more space --

A They do not guarantee space under a reserved airfreight concept, it is strictly an operational, working arrangement which is not tariff edict. Under our concept this would be tariff edict, if you accepted this shipment you would have to commit to boarding it.

Q Did you hear Mr. Ryan testify regarding preplanning of his airfreight forwarder shipments?

A Yes, indeed.

Q Did you hear him state that if this were the system adopted that it could be disruptive of existing airfreight forwarder operations?

A I don't recall that I said that.

Q Did you hear him so state?

A I don't remember that.

Q Do you think that if shippers used this type of priority, in the way I have described, that it would be disruptive of existing airfreight forwarder operations?

A Mr. Bernhard, I don't think it would be disruptive at all. I think that the problems of peaking and peak loading would continue as they do at present, and they would be -- the problems would be worked out by operational arrangements just as they are. Forwarders have a great deal of discretion, they can choose alternative routings, they have

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ways and means of trying to avoid bottlenecks in the system. The carriers have ways and means of overcoming capacity problems. This is what would happen in the normal -- this happens in the normal day-to-day course of business and would continue to happen in the normal day-to-day course of business.'

Q This is when the forwarder is requesting space in a particular airline and finds it is closed out, he goes somewhere else, right?

A Yes. Under our concept, if the carrier cannot commit to the space, he simply advises a shipper that he cannot board that traffic, that priority traffic that has come ahead of him has boarded.

Q Let's take this situation --

A The shipper then still has the responsibility of finding the best routing to expedite that high expedite shipment.

Q Right.

A But the control of the movement and control of the routing is retained by the shipper under our concept.

Q Fine.

Now let's continue with our illustration of this container of flowers.

The forwarders bring their Type A containers out to the airport on flatbed trucks ordi[illegible] not?

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A. Well, Mr. Bernhard, the forwarder's preplanning is not a rigid concept. It involves utilization of space on many carriers, and many last minute arrangements are made. It is not -- it is a fluid situation at all times.

Q. Yesterday in talking about this high expedite service that you are suggesting, you indicated that you didn't expect it to be this container-load type perishable flower that I have been using as an illustration. Is that still your position?

A. Yes.

Q. You indicated, as I recollect, in criticizing my question, that in your opinion the type of high expedite traffic would be relatively small shipments acceptable for belly loading in passenger planes, and freight planes, belly of freight planes. Didn't you say that?

A. That is right, because volume movements wouldn't be -- traffic moving in high volumes is not characteristically -- I mean, the standard airfreight service is characteristicall what that traffic requires.

Q. Do I understand that these high expedite shipments, as the witness for Novo, I believe, described them, are handled pretty much on an individual basis?

A. Right, by the forwarders --

Q. Yes, by the forwarders.

A. Right.

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Q That would mean they wouldn't move as part of a consolidation, right?

A Normally they are taken out of that consolidation pattern and handled --

Q Individually?

A Right, to speed up the --

Q This is the concept you have in mind under your plan, right?

A Yes.

Q So these shipments -- it necessarily follows these shipments would never be containerized, right?

A Not necessarily. In other words --

Q Along with many other shipments, I mean.

A Not with many others, no. But I can envision situations where the flight that was most appropriate for this particular service -- this package could be put into, say, and LD-3 container with other freight that was moving on that LD-3 flight -- I mean, on the 747 flight.

Q In general, however, it would be moved individually rather than containerized or consolidated?

A I think that is true, yes.

Q Right.

Now, the forwarder would only be interested in an airport to airport movement, correct?

A That is correct.

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MR. HAFFER: This is absolutely in error, Mr. Examiner. It is absolutely in error.

MR. BERNHARD: What is the rule, then, if you say I am in error, I would like to know what it is.

EXAMINER KEITH: Mr. Ryan, you brought the problem up, do you know?

MR. RYAN: It is my understanding that there is a rule making proceeding in being which is not yet settled in which the Board has said that when a carrier says "Your reservation is confirmed," by telephone, that there is no tariff provision that covers that and it is unclear whether there is accurately a reservation made at that point or not. And the matter is open for rule making.

EXAMINER KEITH: All right. Mr. Haffer?

MR. HAFFER: In addition, the Board, the Enforcement Bureau has taken the tentative position that the confirmation by telephone is a confirmation which, until the completion of the rule making proceeding and the determination otherwise, requires the airline to pay compensation for failure to board where the confirmation is rejected upon the customer or passenger appearing at the airline counter.

MR. BERNHARD: Okay. I will accept these things. I don't know if they are true or not, but I will accept them.

BY MR. BERNHARD:

Q Now, are you suggesting, Mr. Currier, that the

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A we contemplated a through rate. I think that would just as there are joint tariffs now which provide for the divisions between the carriers, I think the same approach could be followed here.

Q Also Mr. Bernhard asked whether it were in fact true that the present air express service were not available to all shipments. And I think you responded by simply answering yes.

Is there anything further you would like to add to that response? Any qualifications?

A Mr. Meiser, I am sorry, but I am not sure I understand the question.

Q Whether or not Mr. Bernhard -- Mr. Bernhard's question was whether or not air express service today is available to all shippers and you responded by saying yes.

Well, first let me ask, by shippers, do you mean to include air freight forwarders?

A Well --

Q Is air express service today available to air freight forwarders?

A Not in the sense that it involves REA, because the air freight forwarders do not want to put their traffic through REA's service. So the only use of air express by forwarders is when the forwarder can give it directly to the airline without involving REA.

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mean?

MR. MEISER: Putting in a second level airport to airport air express rate.

MR. BERNHARD: What do you mean by "under today's concept"?

MR. MEISER: Retaining REA under the agreement and everythi ng else that goes with it.

MR. BERNHARD: Now I understand the question.

THE WITNESS: The key difference would be the way traffic was handled. In other words, if you put it into the current concept, it would be processed in the manner that air express is now processed, that is, under the 59 minut rule, and pooling between carriers, this sort of thing, which would mean the shipper would lose control, and our system is the opposite in that the shipper is the one that decides the flight.

MR. MEISER: That is all. Thank you.

EXAMINER KEITH: Mr. Bernhard?

MR. BERNHARD: Yes, sir.

RECROSS EXAMINATION

BY MR. BERNHARD:

Q Beginning with the last question you were asked by Mr. Haffer, did you hear the testimony in this proceeding both by the airlines and the express company that where a shipper desires a particular flight, the express company and

A. That is possible, yes.

Q. And this is the type of service the forwarder would want to provide -- forwarders want to provide under the high expedite proposal?

A. I think I made it clear that the forwarder would maintain control to the greatest extent possible.

Q. Now would the forwarder desire to control interline movements of high expedite traffic at the interchange point or not? Which is the ideal situation?

A. I think he would desire to control it, yes, he would.

Q. By controlling, you mean he would be able to receive it at the transfer point, make his own selection of the onward carrier?

A. Correct.

MR. BERNHARD: That is all I have.

EXAMINER KEITH: Mr. HOff?

MR. HOFF: Just a couple.

BY MR. HOFF:

Q. Mr. Currier, you indicated in response to a question by Mr. Giffin that you considered -- that you defined the air express monopoly as that special arrangement with the airlines.

My question is very simple, do your members want to be a party to that agreement?

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A. I think that has been answered, the answer is no, Mr. Hoff.

Q. In Mr. Bernhard's elaboration of my question about joint loading, am I correct that the joint loading mechanism is available for use by freight forwarders on a greater scale than it is now being used?

A. Yes.

Q. Does it -- is it not also true that joint loading arrangements are used substantially in international traffic?

A. Used much more in international than domestic.

MR. HOFF: Okay.

EXAMINER KEITH: Any further recross?

If not, you may be excused, Mr. Currier.

(Witness excused.)

EXAMINER KEITH: Mr. Meiser, does that complete the case of AFFA?

MR. MEISER: Yes, it does.

EXAMINER KEITH: Mr. Bernhard?

MR. BERNHARD: Could we have our recess now?

EXAMINER KEITH: We will take a ten-minute recess.

(Recess.)

TESTIMONY OF MR. KING, EMERY

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Airport, Chicago.

Q. At page three of your testimony, you discuss a shipment which was sent to you by Mr. Doyle from Waurika. And as your testimony now stands, we are left in suspense as to the denouement of the saga?

A. The shipment arrived in Danbury, Connecticut, in REA surface express movement on September 27th, having left Waurika, Oklahoma, on September 10th.

All efforts to trace the shipment from either Danbury or Waurika failed. I received a postcard from the Danbury office of REA on the -- it was mailed on the 26th and I guess the card was received on the 27th, and on the card is stated, "Beyond delivery limits."

The card is also stamped "Office hours, 9:00 a.m. to 5:30 p.m., closed Saturdays and Sundays." Because Emery's office hours in the executive office is from 8:30 a.m. to 5:00 p.m., I could not drive up to Danbury and get the shipment.

During the tenure of this case, I have been here and going home on weekends and since they are closed on Saturday and Sunday, I could not retrieve the package.

Last weekend, I received another postcard from REA Danbury regarding the same shipment, still stamped "Beyond delivery limits," but on the reverse side, it says "Final notice. Goods will be sold unless instructions for

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disposition are given immediately."

Well, since I cannot make a phone call to them, when I am home on Saturday and Sunday, I presume the goods will be disposed of according to the instructions on this card.

Q. Mr. King, did you have occasion in Connecticut to call and request pickup service at Waterbury, Connecticut?

A. I did.

Q. What were you advised when you made that request?

A. Well, first of all, Mr. Examiner, there was no telephone listing for REA, Railway Express, or Air Express in the Waterbury telephone directory. We call information, and we were given an enterprise number.

We called that enterprise number and requested a pickup in Waterbury. The man answering the telephone said that there was no pickup service in Waterbury, Connecticut, and that if we wnated to bring it to REA in Hartford, Connecticut, on Brainard Avenue, he would accept it.

Q. Mr. King, were you here when Mr. Byrne testified?

A. Yes, I was.

Q. Do you recall his description of the expanded services which REA was to have allegedly put into effect on November 1?

A. Yes.

Q. Have you spot checked some of the major points in

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late at night? There just is no way possible."

So with that, we hung up.

That completes it.

BY MR. RYAN:

Q Mr. King, you have seen, I believe, the rebuttal exhibit submitted by REA in rebuttal to EAF-R-26, which lists its points where REA may or may not be providing service.

Since Mr. Kerrigan sponsored that rebuttal exhibit, I wonder if you have spot checked some of the pickup and delivery service in the points listed at REA-R-1300?

A Just a minute.

Q I call your attention specifically to American Falls, for example.

A Just one minute, please.

Mr. Examiner, in the case of American Falls, Idaho, our field report delivered to me stated that there was truck service to American Falls twice a week only.

We also, then, have another report directed to me from our region, Southwest region, that a truck service into Bastrop, Louisiana, moves only when it is loaded. There is no schedule.

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discussing our conversation with them here on this case, sir.

EXAMINER KEITH: I see.

BY MR. RYAN:

Q Mr. King, if REA were to cease operations under the air express agreement in the immediate future, what do you think would happen?

MR. BERNHARD: Excuse me. Mr. Ryan, are you proposing that they cease air express or total operation?

MR. RYAN: Air express and/or total operation.

MR. BERNHARD: You are not suggesting that they receive air freight forwarder authority as part of your question?

MR. RYAN: No, sir. I am assuming, frankly, that it may just happen that they go bankrupt before this case gets ultimately decided and then what would happen?

MR. BERNHARD: I object to Mr. King answering --

MR. RYAN: In terms of Emery's plans, I am sorry.

MR. BERNHARD: All right.

THE WITNESS: Emery is prepared to assume its present tariff to provide all of the commodities that are presently found in the current air express tariff, and furthe to add all of the points that are not presently in Emery's air freight forwarding tariff in order that there can be a continuation of the same type, scope, commodity and points of service as is presently contained in REA's air express

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activities. We believe that the air carriers themselves would file some sort of a complementing tariff similar to their air-freight tariff that would provide the underlying air carriers with the same sort of service to be held out to the public and to be used by air freight forwarders in the event of demise of REA.

Such would be an airport-to-airport tariff, and inasmuch as Mr. deVoursney discussed at quite great length the ability of ACI to provide nationwide pickup and delivery service, I see that there would not be any gap in continuation the type of air express service in the event that REA disapears.

BY MR. RYAN:

Q The word "consolidation" has been used many, many times in this hearing, in, I am afraid, many, many sentences.

Could you try to summarize your understanding of how various people have used that word in this proceeding and how Emery uses it?

A Mr. Examiner, the word "condolidation" has been used by REA to discuss the closing of their offices and submerging them into a branch packageagency and they have used the word "consolidation" in that sense.

We in air freight and air transportation, we look upon "consolidation" as two or more shipments combined under one air waybill. That probably is the shortest, easiest

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allegation that the freight forwarders, and that includes Emery, tend to concentrate their shipments into the late afternoon and evening hours?

THE WITNESS: Mr. Examiner, may I refer to my notes?

EXAMINER KEITH: Sure.

THE WINTESS: Again, Mr. Examiner, I draw upon our automated records. This is for the first week in January, this year. I selected some cities from this report and the city pairs, for example, Chicago to Boston, we moved five shipments prior to 12 noon, and one shipment in the afternoon from 12 noon to 6:00 p.m. and two shipments in the time frame 6:00 p.m. to midnight. In the Chicago-Kansas city market, we moved or tendered 17 shipments in the morning until 12 noon, four in the afternoon from 12 noon to 6:00 p.m. to midnight.

In the Chicago-Los Angeles market, we moved seven shipments prior to 12 noon, and two shipments in the afternoon from 12 noon to 6:00 p.m.

I believe this again demonstrates that we move shipments throughout the day, not holding for the evening jet freighter flights, but we deliver about 50 percent of our shipments to the airlines for movement on passenger combination flights.

We can pick out exact times of day of the movement

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of these shipments, the number of pieces and the weight. But I think the demonstration on here is fairly clear that we move them throughout the day, not waiting for -- again, some of the allegations that everything goes on the late night jet freighter.

Inasmuch as there are only 51 cities that have jet freighter service in the United States we just simply can't move all of our shipments by jet freighter. At the present time Emery is moving about one million pounds of air freight daily in the United States with some 10,000 shipments and our transit times indicate that we have a faster transit time in these markets than does REA.

So if we are going to achieve next day delivery, preferably next morning delivery, we can't hold for jet freight that don't go to the market places that our shipments are going to. I think that that gives us an idea, gives you an idea, that we move these out as the shipments occur to us. The low number of shipments per airline air waybill or consolidation also sustains that position.

BY MR. RYAN:

Q Mr. King, there has been some concern in this proceeding about live animals and birds. If REA were not a factor in the market, would those animals and birds still be able to be shipped?

A Oh, yes. Live animals and birds an baby chicks

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As you are aware, REA has failed to further amend this exhibit. Has Emery investigated and determined the delivery time of those four allegedly lost shipments?

A Mr. Examiner, we have located the delivery times and actual papers of those four lost shipments. Three of this shipments were delivered the next day, the fourth was delivered the second day.

Therefore, we could alter upwards emery's transit time on the next day by three additional shipments and upwards then by one shipment the transit time for the second day category.

Q Much has been said, Mr. King, in this proceeding, about the alleged size and scope of REA's geographic coverage. Could you tell us what the size and scope of Emery's coverage is?

A Yes. Emery has a total of 164 terminal locations, on airports, immediately adjacent to the airports, or via Emery's agency system. Emery's tariff has 43,625 city pairs in it. We have additional 16,800 points in our pickup and delivery tariff.

Therefore we believe that Emery's scope is more extensive than REA Air Express is. We also note that the points of service in the pickup and delivery tariff of Emery has 6,756 points, whereas REA in their air express tariff has only 5,700. These are points, tariff points, in

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A. No, I would say that it was done both ways, revenue and shipments.

Q. But you don't know what the shipment figure is?

A. No, I don't.

Q. Do you know how the cost estimates were arrived at?

A. I would say that they were probably arrived at using as a yardstick the existing costs that we pay now to air express.

Q. You don't know why certain items are -- You don't know for a fact why certain items are different from others, without air express, why certain items are different with and without?

A. Sure. In the case of salaries, we would be adding more people. We would be operating different types of vehicles, in the case of repairs.--

Q. Let me stop you a minute. How many more people would you be adding?

A. Well, we would do it on a case by case basis.

Q. All right.

A. In launching our express service.

Q. So you don't have any definite numbers to tell me as to how you arrived at these differences?

A. No.

Q. I gather from your discussion with Mr. Bernhard

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that you do not want to become a party to the air express agreement?

A No, we didn't say that.

Q Do you?

A We would be interested if that was the way that the Board ruled, that air express service was open to other users of the service.

Q Would you accept a resriction on your freedom to price to the public?

A How do you mean that?

Q Would you agree to get together with the airlines and decide on what price the public should pay for your air express services?

A No, we wouldn't want to do that.

Q Would you agree --

A Not if we are in a competitive market.

Q Would you agree to get together with the airlines as to how your traffic would be routed?

A Oh, certainly, we will to the extent that we would be able to provide an expedited service to the shipper, but if you are asking would I do it on a restricted basis, no. The answer is no.

Q Now, turn to BOR-Air 300. There are a number of companies, pages 4 onward, with names I have not heard of before and I would like to know who they are. New York

Shippers and Consolidaters, Inc.

A. New York Shippers and Consolidaters is a consolidating company that consolidates shipments and forwards them via other means of transportation, of which BOR-Air is part.

Q. What is the "Family Realty Company"?

A. A real estate concern that acquires property and leases it to other people, which BOR-Air leases from Family Realty.

Q. And Faster, Inc.?

A. It is a pickup and delivery company.

Q. Operating where?

A. In Chicago.

Q. Gertz Messenger Service, Inc.?

A. It is a pickup and delivery company operating in New York.

Q. L. B. Delivery Service?

A. Pickup and delivery company in Los Angeles and San Francisco.

Q. When did your company first desire to obtain air express rights?

A. At the time the Board opened the proceeding.

Q. Who made the decision to apply for your company?

A. Mr. Bohrer, our chairman.

Q. Was there a meeting of the board, board action taken?

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A. To the extent that we have such meetings in our company, yes.

Q. Was there any formal action taken?

A. Yes, we filed -- became an intervenor in the case.

Q. Was there any formal board of directors written action?

A. No, no written action.

MR. WOLFE: No further questions.

EXAMINER KEITH: Mr. Giffin?

MR. GIFFIN: Yes, sir.

BY MR. GIFFIN:

Q. I take it from your earlier testimony that your assumptions in your air express proposal were based on a similar rate offered to you by the airlines.

If it were true that the airlines offered you a rate which included a premium above the present airfreight tariffs, how would this change your proposal or your plans?

A. It wouldn't change them at all. We would anticipate that we would have a rate higher than what we pay in air freight service.

EXAMINER KEITH: You know, that seems to me inconsistent with an answer you gave to Mr. Bernhard, where you said you would anticipate a rate that would be equivalent to the sahre that -- share of revenue that REA gets. Did I understand that correctly?

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MR. WOLFE: It seems inconsistent to me.

THE WITNESS: I think what I am trying to say, Mr. Examiner, is the fact that we would anticipate that the airlines who would now enjoy a higher return for the carriage of air express than they get for airfreight, that we would be paying some higher rates for air express service in return for the priority that we would be entitled to.

What they would be -- we would like to have a basis to sit down and discuss it with the carriers. We feel that we would be giving more business to the airlines than they presently enjoy, and at a lesser cost to them than they are presently incurring in their existing system of handling and perhaps there would be some excess they could afford to offer us.

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BY MR. GIFFIN:

Q Now assuming REA became an airfreight forwarder under the same circumstances which airfreight forwarders operate today, and assuming that each of the airfreight forwarders had equal opportunity to participate in air express service, what would be the reaction of your company with respect to any changes in the number of points served?

A In respect to our service or their service or just how?

Q Your own service.

A Well, we wouldn't just wholesalely increase points of service without some justification of obtaining business to those particular points and we wouldn't go out and add additional expense to our cost of operation either, without some reasonable chance of getting business to cover that expense. We would build, if we were awarded the right to handle air express, on the same way we build our airfreight service. bit by bit and as traffic warranted. But we would be offering competitive service in many markets that doesn't exist today.

Q So this would be a product of your determination with respect to traffic available and the tariff --

A And our ability to develop the traffic.

Q Can you tell me your general philosophy with respect to whether you expect a new station after a period of build-up to essentially pay for itself or whether you look for

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profitability over your entire system?

A We look at it both ways. We are entering a system now in our company that is not yet quite fully developed on a profit center basis, in which each station is on a profit basis. And we try to develop it that way. At the same time, we look at the overall company profit.

Right now it is based primarily and largely on our overall company profit.

Q Assuming, again, the equal footing with REA and airfreight forwarding, what would your reaction be in terms of the types of commodities that you carry? Would that change?

A I think it would, yes.

Q There are certain commodities that you would carry if you were on equal footing with REA.

A Yes.

Q What would they be?

A Right now while we don't refuse it, we don't look for it but there would probably be certain types of traffic we would carry, perhaps blood, eyes, and things of that nature, the humanities. We don't turn them down but we don't go out and seek them, either.

MR. GIFFIN: That is all. Thank you.

EXAMINER KEITH: Mr. Reiber, do you have any redirect?

Mr. Bernhard?

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MR. BERNHARD: Just maybe one or two based on the responses.

BY MR. BERNHARD:

Q You stated, Mr. Stern, that you would like to be a party to the air express agreement with the airlines, is that right?

A We would look at it favorably, yes. If the Board so ruled that air express service would be open and available to other operators, and part of that was becoming a party to the agreement, we certainly would look on it favorably.

Q Let's not assume that the Board ordered people to become parties to an agreement, I don't think the Board can do that.

MR. REIBER: Mr. Examiner, that isn't what the witness said. He said if the Board authorized it.

EXAMINER KEITH: I don't think we should quibble about that Mr. Reiber, really.

BY MR. BERNHARD:

Q Is it your interest, Mr. Stern, to become a party to the present agreement that REA has with all its terms and conditions?

A And the same ton mile return or what?

Q There is no ton mile return, Mr. Stern. The return is --

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is --

EXAMINER KEITH: Ask him, Mr. Bernhard, would you --

MR. BERNHARD: I asked him a question and he -- returned a question.

EXAMINER KEITH: Well, the witness is under the impression that there is a ton mile differential.

THE WITNESS: I don't want to imply a cost factor that is --

EXAMINER KEITH: Mr. Bernhard is asking you, would you be satisfied with the same arrangment that REA has with the airlines, and that is a differential of revenue on the same --

MR. BERNHARD: And all the other terms and conditions, also.

MR. MEISER: Mr. Examiner, I think he has already answered the question.

EXAMINER KEITH: No, he hasn't.

MR. MEISER: In response to Mr. Wolfe's question, Mr. Examiner.

EXAMINER KEITH: I am not certain that he did.

Go ahead, Mr. Stern.

THE WITNESS: I would say yes.

EXAMINER KEITH: I think -- does that complete your questioning?

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BY MR. BERNHARD:

Q Now, I have to take one more question.

Would you explain how more than one ground service company could possibly operate under the agreement with the airlines as it now exists?

A Well, this is why I asked my queston about the agreement. If you are presupposing that we would be the only carrier to provide this service, we are not interested in becoming the only air express operator.

Q Then --

EXAMINER KEITH: I think, Mr. Bernhard, that is a difficult thing to pursue. The witness says if this is the way the Board finds it. I don't know whether he envisages any particular way. Perhaps he doesn't see it that way. But you have asked the question and he has said, well, they would be willing to share it. Now, --

MR. BERNHARD: It leaves it in a completely unknown state, what he really means, or whether he knows what he really means.

EXAMINER KEITH: I guess the witness doesn't know, nor do I, nor anyone here, know what the results of this case will be.

All he is saying, if there is some pie to be sliced up and had, they want to participate in it.

MR. BERNHARD: If that is what he is saying, I will

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stop asking questions.

EXAMINER KEITH: Isn't in effect that what you are saying?

THE WITNESS: That is what I am saying.

MR. BERNHARD: That is fine.

MR. WOLFE: I have a few questions, Mr. Examiner.

BY MR. WOLFE:

Q By your answer to Mr. Bernhard, just let me find out, you didn't change a prior answer to me that you would not want an agreement whereby you had to sit down with the airlines and determine your rates to the public and if you had to sit down with the airlines to determine whether there would be any restrictions on your route --

A That doesn't change my answer to you at all.

Q Okay. Now, one more question arising out of cross-examination.

I don't quite understand what rates you would expect. I thought you said earlier to Mr. Bernhard and to me in questions about your forecast that you were assuming the airline rate be the same as to REA, and I believe you stated later to Mr. Giffin that you assumed that the rate would be a premium on air freight rates. Isn't it your testimony that the rate which REA, in your terms, pays to the airlines, is a lower rate than the air freight rates?

A No.

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large area such as San Francisco or Los Angeles, but on these routes, the nubmer of stops tends to average out, and if it exceeds what one driver can do, they will have another driver. But normally, it is not a constraint.

Q So to the extent -- presumably you would have to get additional drivers if there is a constraint? Just the same as you would have to get additional trucks if there is a constraint on space?

A If there were -- if it developed to the point where there were more stops than a driver could make, what would happen would be that the route would me broken up, and there would be -- it would be reassigned, only a portion to that driver and a portion to another driver.

Q Has there been any incident where you found space has been a constraint?

A Well, the average would go from very low yields to large yields. However, the policy of the company is to project whatever traffic is offered it on the same day, so it may be a constraint with respect to the one driver, but not a constraint with respect to the company.

Q In other words, you can pickup shipments regardless of how much space is in the trucks and the system overall?

A Yes, that is right.

Q Do I take it from a question by Mr. Bernhard that you have any position to whether there should be an agreement

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or tariff if forwarders got air express authority?

A. Yes, we prefer that the present basis of agreement --

Q. You prefer an agreement?

A. Yes.

Q. Are you assuming that the airlines would be sending runners around to the forwarders under this agreement, picking up the traffic at their offices?

A. You are speaking of forwarders?

Q. Assuming that -- well, however many forwarders get the authority, if SPAF is the only one in addition to REA, then --

A. When speaking of the present basis of agreement, I mean as it is -- now, I hesitate to conjecture what basis SPAF would take as a result of this proceeding.

Q. I thought you stated what you wanted was the present basis of the agreement?

A. Yes. Our preference is that, I did not say we would not accept a tariff provision.

Q. So you are not contemplating the method of operation that is built into the current agreement when you made that statement?

A. What particular method of operation --

Q. Whereby the airlines send runners to REA facilities to pick up the express.

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A. No, we anticipat : handling the traffic in the same -- physical handling in the same manner as our airfreight. I say substantially, with very little in the way of difference.

??? Q But the rate and divisions would be based on the air express agreement, is that what you are saying?

A Yes.

Q When did your company first decide to obtain air express rights?

A At the time of the commencement of this proceeding by the Board.

Q Who made the decision for your company?

A Members of the board of directors of Southern Pacific Air Freight.

Q Was there any formal resolution?

A I did not see a formal resolution, but the instructions were given to the general counsel.

Q Did SPAF make any studies in connection with your decision to operate air express, to apply for air express?

A What sort of studies did you have in mind?

Q Any formal financial projections?

A We made a general evaluation on which the conclusion was based that the present agreement was a satisfactory basis of operations. We did not have -- pretend to have any idea of what the outcome of the proceeding would be in respect to the future nature of air express, the rates and divisions and

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with the improvements it requests in air express, and look again at the matter in the spring of 1974. If the Board then decides that there is any harm to any party in this industry, the remedy is available to the Board, of course, at that time.

REA believes that there will not be any such harm and therefore it is more appropriate to deal with this matter by means of an experimental period, after which both authoritys can be reviewed, then it is to deal with it by means of the Bureau's transitional approach which prejudges an issue that is not yet ready to be judged.

Thank you. I will save the rest of my time for rebuttal.

MR. MINETTI: Mr. Mathews, is airfreight forwarder authority necessary for REA's survival?

MR. MATHEWS: REA's survival? REA thinks that both of the aspects of the request that it makes to the Board, both the improvement in air express authority and the airfreight authority, are necessary if not to REA's survival, at least to adequately serve the needs of the shipping public. You could say, I suppose, that REA could somehow muddle through on less than that, but given the competitive factors that I have tried to suggest, that I have set out in more detail in the evidence and the brief, REA needs, as the world evolves, to have the additional capital resources from revenues or investment necessary to continue to upgrade its air express operation

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I am sure the shippers would say that the issue was not the mere survival of the company, but whether the company will be on sufficiently sound financial footing so that it can serve the shipping public. REA, as you know from past inquiries into this matter and from the record in this case, has an enormously more wide-flung system than any freight forwarder or even than the industry collectively. It can reach the smaller shippers and the smaller points. It does not concentrate in the major markets. This is an immense advantage. This is really what the shippers who have appeared in this case were talking about.

If REA can only operate marginally in such places or it, because of the marginal nature of its entire operation it is reluctantly forced to pull out of many of those smaller points, and concentrate as the forwarders concentrate in the big markets, the shippers' interest will not be adequately served. The forwarders attempted to suggest, of course, in this case that REA has already done so by what has been called its consolidation program, but that is not the case. REA's consolidation program has been designed to make more efficient its present service to smaller points.

In some cases where there are a lot of offices together, they have been consolidated into fewer offices which serve the same localities. That is not really a retrenchment in the scope of service, or it is a very

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de minimus one. If REA merely survives because of the decision in this case and under the Examiner's decision that is, I expect, the best that can happen to it, it will be forced to do what the forwarders do because it is the only company that maintains this massive, fixed investment spread throughout the country, to anything like the same degree.

The evidence in the case is to the effect that it will have, even after the consolidation program, six times as many offices as Emery. I think Examiner Newmann found in the -- in one of the companion cases that he recently decided, the figure is ten times. That kind of fixed asset basis has to be supported by a much larger volume of revenues than air express can provide. Otherwise there has to be a retrenchment of the fixed asset base. I think that is really the issue.

MR. MINETTI: Well, can REA operate at a profit without this air freight forwarder authority?

MR. MATHEWS: I am hestiating because I am not sure what your other assumptions are.

You mean if nothing happens to change the situation that REA is now in?

MR. MINETTI: Under your present circumstances.

MR. MATHEWS: Under the present circumstances? Are we including the rate case in the present circumstances?

MR. MINETTI: No, I am not.

MR. MATHEWS: I find it very hard to believe that even if the Examiner's decision in the rate case were to be modified by the Board in a way that REA would regard as a more appropriate calculation of airline costs, I find it very hard to believe that it would be possible for REA to continue its present operations if it obtains nothing further from this case than what it already has, which is essentially what Examiner Keith has given us.

He has left the parties where they are, kept exclusivity for REA in air express but has done nothing to reform the agreement, done nothing to strengthen REA's air express authority, done nothing to give the forwarding rights.

Under these circumstances, REA's evidence in this case indicates that it will have no choice but to play the

game much more the way a forwarder does in terms of the scope of markets served and the scope of commodities carried.

And the shippers who now at these smaller points ship all kinds of valuables and perishables and live animals, all those things, will be deprived of the service that they have amply indicated they need to have.

There's a public interest aspect to the REA operation, obviously, in the sense that nobody else provides this service in anything like the same way. The forwarders will argue to you that they do, but in fact they do it over a multiple carrier arrangement, and in the great majority of cases at these small points it means that there's no single carrier responsibility, no single party that the shipper can look to for claims, losses, that kind of thing, no single documentation, no single waybill, all of the advantages both in terms of cost and in terms of public convenience that REA affords.

Unless REA obtains what it seeks in this proceeding, it is going to have to reevaluate, however reluctantly, how it can operate on a reduced basis, and will not benefit the shippers nearly to the same degree, but it will enable REA to avoid bankruptcy.

MR. MINETTI: REA is not operating at a profit currently, is it?

MR. MATHEWS: REA has lost $90 million in the last

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five years. It has a negative equity now of something like 24, 25 million dollars. Its revenues for any given month in air express and in surface may or may not exceed the cost, depending on the seasonality of the markets involved.

It has obtained a new line of financing from a bank in Pennsylvania. But in large part that is a replacement line of financing for a line of credit that it lost, you might say was transferred, from the Bank of California. It is a very marginal financial condition. It is capable of providing the new service, as the Examiner found, if it is awarded the new service, and it is capable of doing so in large part because of its confidence from conversations with prospective lenders that it would receive new capital if the Board makes the awards that REA seeks.

But its position other than that must remain a highly marginal one and against the backdrop of a declining volume of air express shipments, down as I say by a third in the last five or six years, and continuing in that direction -- the prognosis if the Board leaves the status quo as it finds it is not a very favorable one.

MR. MINETTI: Did REA ever operate at a profit, Mr. Mathews?

MR. MATHEWS: It operated at a profit in earlier years, yes. I think it was operating at a profit as recently as the early 1960s. Not since then.

the substance of most of these reforms.

I think they would be more receptive in the area of weight breaks and containerization rates than in other areas, but in the matter of REA's freedom to set its own rates -- which of course includes the problem, an authority problem, that you face in the rate case of making sure that the airline cost component of that is an accurately allocated cost figure -- and in terms of REA's freedom to establish its own routings so that the shipper gets his parcel to his destination as promptly as possible, I think you will find that despite willingness to talk, there's no real reason to expect that we shall fare any better than we have in the past, unless we have the assistance of the Board that we asked for in the spring of 1970.

MR. MINETTI: Under the present agreement, Mr. Mathews, what is the division of revenues between the airlines and REA?

MR. MATHEWS: I am not counsel in the rate case, so I am not really very close to that. I will say it is approximately 60-40, but I stand to be corrected.

MR. MINETTI: Is there any disagreement over that division?

MR. MATHEWS: There's a very substancial disagreement over the division. It relates to how the airlines can calculate their costs for freight versus their

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as well as REA, these are reforms which should be incorporated in the agreement and in substantially these terms, plus the independent authority REA needs to bargain for them.

I am sure that the Board has the means available if it concurs as to the substance of the reforms, which is a major issue before you, to see that those reforms are incorporated in the agreement.

Otherwise, the shipping public, the air express business and the Board have very great problems fairly imminently.

MR. MINETTI: Thank you.

MR. GILLILLAND: Mr. Mathews, to what extent are REA's air express costs mixed up with other costs?

MR. MATHEWS: You mean with the surface costs?

MR. GILLILLAND: Yes.

MR. MATHEWS: That's a question to which I can give only a general answer, since as I said, I am not counsel in the rate case, and all of those issues were ventilated in detail there.

REA has done the best it can, obviously, to make an accurate and realistic accounting calculation that distinguishes between express costs and surface costs.

MR. GILLILLAND: Do you know how the division is made?

MR. MATHEWS: I really don't, no.

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MR. GILLILLAND: Can you say whether or not a precise determination can be made, that is, can REA tell with precision what its air express costs are?

MR. MATHEWS: I would really prefer, if the Chairman doesn't mind, that that question be saved for counsel in the rates case, because I am not qualified to deal with it.

MR. GILLILLAND: Have efforts to reach an agreement with the air carriers been continuing?

MR. MATHEWS: We have been talking with the carriers on a continuing basis ever since the Examiner's initial decision, yes. Of course, we have been talking with them as I have indicated prior to that time. There have been exchanges of letters. There has been exchange of correspondence, several letters on our side, at least two responses that I know of recently from Mr. Bernhard representing the carriers.

In each of these instances, we have said we would like some assurances that you are or are not in agreement with these principles for reforming the agreement and in each instance we have had a letter back saying in effect, "We will talk as we always have."

If we move to a sufficiently high level of generalization of course, we all agree that we should do something for the needs of the shipping public. When we get

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down to the more specific questions such as the one I raised, tariff freedom and so forth, we have no confidence from that correspondence that absent of the Board rule, we will be making any progress.

MR. GILLILLAND: It strikes me as of right now that regardless of how the Board may decide this case, if REA will continue, it will have to reach an agreement someplace down the line on some things.

MR. MATHEWS: Right.

MR. GILLILLAND: Would it be feasible and have any potential for productivity if rather than decide the case at this time, the Board would postpone decision to give the carriers and REA a further opportunity to reach agreement with the thought that such an agreement might be in front of us at the time we decided the case?

MR. MATHEWS: I don't think it would be helpful in view of the long history of negotiations between the parties.

As I have said, one of the issues goes back to the 40s. All of these issues have been endlessly negotiated for a long number of years. I don't think any more time is going to achieve any better result unless the Board directs that certain reforms be incorporated in the agreement submitted to it for approval. I think it is a problem the Board will have to face now.

MR. GILLILLAND: The thing I would wonder about,

ARGUMENT OF MR. BERNAHRD, PARTICIPATING AIRLINES

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MR. GILLILLAND: Counsel for the National Small Shipments Traffic Conference -- oh, yes, we have questioning of you, Mr. Bernhard. Maybe you would have liked it better if we went right straight ahead.

MR. BERNHARD: I'll enjoy the questions.

MR. MINETTI: Mr. Bernhard, do the airlines make a profit under the air express agreement?

MR. BERNHARD: According to the Examiner's report and the record in the rate case, the airlines lose somewhere between $12 million and $20 million on air express. I am not sure just where the figure lies, but somewhere between those two figures. The airlines in the air freight rate case have proposed a rate structure based upon airline costs plus a fair return and REA costs plus a fair return, which will retain the relatively low level of air express rates for the public, and at the same time produce adequate revenue for both.

Now this will cut into, to some extent, the revenue the express company has been getting from air express, but air express has always been profitable for the express company. Air express standing on its own feet. The first five months of this year the express company made a profit every month on air express, standing by itself.

MR. MINETTI: Do they make a profit under this agreement, though?

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MR. MINETTI: I see.

You talked about cost savings to the shippers under the air express agreement. Do you have any idea what the total cost savings are for any particular period?

MR. BERNHARD: Well, I took 1970, 52 percent of the shipments are minimum shipments, and I pointed out that if those same shipments had gone in airfreight forwarder service it would have cost the public an additional $27,929,000. That would be 4,267,000 shipments. On the average air express shipment, there would be a 56 percent higher cost to the shipper to use airfreight forwarder service for the average shipment than there would be for the average express shipment.

Now on page 69 of our brief, we have given some illustrations of precisely this problem -- pages 68, 69. We have calculated out shipments of different weights going different distances under the present air express structure which includes the $1 increase that you permitted per shipment, all of which goes to REA. And speaking of the matter of rates and what REA derives, every rate increase in express, in the express rates since the present contract was signed in 1964 has been given solely to the express company. The airlines have taken nothing out of these rate increases. They have been unilateral rate increases.

The agreement provides that if one of the partners

requires additional revenue because of increased cost considerations, they unilaterally may petition or file a rate increase. The agreement requires it to be across the board, a percentage increase of all rates.

However, in each of the instances where REA has come to the airlines, and there have been quite a few, the airlines have given their consent not to a unilateral -- not to a percentage increase across the board but to specific types of increases which the express company wanted. We have never obstructed the express company in the type of rates they have wanted. We have never been uncooperative, in that respect.

And they have derived all of therevenue earned from the rate increases since 1964. In addition, we had our first meeting of what is known as the joint committee, air express. That is the working level of the express company and the airlines. The rates are in effect fixed by joint action there.

On July 11, we had the first meeting in almost two years. We used to meet at least twice a year. At that meeting, the express company came to the airlines and said "We would like to put in lower specific commodity rates on newspapers, magazines and publications for competitive reasons."

This would be rates less than agreed to in the

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agreement, and the division to the airlines would be less than the agreement calls for. The airlines consented. This is the only rate they have come to us and asked for that is different from what we have both agreed upon. They have not cited to you an instance of where we have turned them down, except on the long haul, higher weight shipments, where we get the larger share of the revenue.

Those they want to cut down. This is where the airlines do all the work, hauling the shipment all the way across the country. They would like to lower those express rates where we get 69 percent. We are very dubious about lowering those rates.

We are not interested in making express weighing over a hundred pounds become competitive with airfreight. And this is a philosophic area, a policy area, where we are pretty firmly established. Air express is the airlines' small shipment service. There we are willing to do whatever is necessary to get the small shipment traffic at competitive rates, work out rate structures the express company wants, and so forth. But they are griping that their right to set rates to the public involves that area of long transcontinental hauls, 100 pound, 200 pound shipments, so forth.

This is why we want to hang on to a veto. This could have a serious effect upon the airlines. Whatcould really happen is just leaving the airlines with nothing, no incentive

to be in the air express business with our partner. That is not our idea. We want this to be a good business for both of us, not just for the express company. Our interest isn't solely to provide a basis for the express company to bail out its surface operations. We concentrate on air express service. We want that to be a good service. It is up to the express company itself, apart from us and apart from this Board, I think, to work out its surface problems.

I think the ICC is the proper place for that, not here. They shouldn't be asking this Board for all kinds of bases for spreading out costs and so forth, which costs artributable to surface operations. That is what they are really asking.

MR. MINETTI: Mr. Bernhard, I have heard from time to time that the division of revenues between the express company, REA and the airlines, is unfair to REA.

Do you have any comments on that?

MR. BERNHARD: I would be glad to --

MR. MINETTI: Could you tell us why the division is 60-40?

MR. BERNHARD: I would be glad to comment on that and I think it would be useful if I give you a little historical background so you will understand the total situation.

From 1938, when this Board took jurisdiction

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of air express service, until 1959, August 1959, those 21 years, air express service was rendered pursuant to a contract between the express company and the airlines, under which the express company was guaranteed by the airlines all of its costs plus a profit. Think of it, for 21 years it was a cost-plus service. We were never able even to obtain an audit of the express company's costs.

We hired Ernst & Ernst, one of the foremost accounting companies, a number of years ago, before '59 -- I might say, I have been the attorney for the airlines in this business for 25 years, so I am kind of familiar with the history of this. The Ernst & Ernst Company went in there to make a survey of the express company, because we were paying cost-plus, and I think they asked for $50,000. They gave us back 40,000 of it and said we just can't make the audit, it is too complicated. That was Ernst & Ernst. We never had an adequate audit of the express company.

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Finally in 1959, we came to this board and said we have to have a different arrangement. We made an agreement between ourselves, agreement 12866, open to all airlines, which was the pooling agreement, in effect, between the airlines, and providing for an airline negotiating committee to negotiate for a ground service contract.

And then we went to the express company and said, "Now, either we have a partnership agreement or we don't. We are no longer going to operate with you on a cost-plus basis."

At that time it was owned by the railroads. Their philosophy had always been, "We don't mind our express company being in the air business, so long as it doesn't cost us a nickle." That is the railroads talking. They insisted upon cost-plus.

Well, we finally, in 1959, negotiated a partnership with them. We split it 50-50. We picked it out of the air, more or less. There were certain basic costs, and chunks off the top we had to give them, but after that was done -- that was because of impending labor negotiations and so forth -- after that was done, 50-50 split.

Each five years thereafter, '64 and '69, we would get into these hassling negotiations, and each time they got a bigger piece of the cheese and we got a smaller piece. At the present time maybe we are about 60-40, and that is what happens.

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However, we no longer do business on that basis. The agreement that is before you, Agreement 17935,as amended, has completely abandoned the idea of a split down the middle type of thing. What we now have done, we have taken every weight -- air express rates are in 50 mile blocks. This is another wonderful advantage of air express for the public. Two cities, 800 miles apart, the shipper pays the same rate, whether it is between two little cities, two big cities, whatever it may be.

It is a block rate system, like the post office. Well, we now have constructed a tariff and a division manual, both of which are before you in either this or the rate case, in which each weight and each distance is divided. The revenue is divided, for a shipment going that weight and distance, between the express company and the airlines, on the basis of their cost-plus a return, as known in 1970. That is what our effort was. As known in 1970.

As a result of the rate case and the great amount of research done, we now have a better concept of costs, so the divisions and the rate structures are somewhat different. But the concept is the same. At each weight and each distance, the division is different. And the reason for this is very obvious: The express company's services on every shipment is substantially the same. They do the same kind of paper work, the same billing, the same pick-up and delivery and so forth,

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whether the shipment is coming from New York to Washington or New York to Los Angeles.

The variable is in the air transportation provided. That is where the -- as distance increases, there is a variable in the weight as well. As the weight and distance changes, the revenue to the two carriers change. This is what is involved in your air freight rate case -- air express rate case, which is pending.

So it is no longer a matter of a split. If the nature of the traffic should change and become short-haul traffic or small traffic or long-haul, heavy traffic -- if the mix of the traffic changes, the partners are still compensated on a per shipment basis related to the cost of handling that shipment.

It is no longer an arbitrary split. This is very fair. Mr. Cole, the president of the express company, on cross-examination, as I quote in our brief, has stated that this is a fair way of pricing air express.

The airlines agree it is a fair way of pricing air express. The airlines have repeatedly stated they will abide by the decision of the Board in the rate case and the express company has indicated the same. So this matter of "give us freedom over rates" on negotiations, Mr. Mathews said one thing they want is to have the right to set the rates to the public. He mentioned my replies to letters recently

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on this very point. Our reply is very simple. As long as our division for that weight and distance is protected, we don't mind if you play around with the rates to the public. We are concerned with covering our costs and getting a fair return on that particular shipment going that weight and distance.

If you want to juggle that rate to the public, we are quite willing to let you do so, provided, of course, that we work out certain limitations and conditions.

Now REA has asked us to give them carte blanche to do whatever they want with the rates to the public. Well, this is absurd. We can't just answer such a request by letter and say, "Sure, you can have it."

We answered them, "We understand what you want. And we are willing to sit down and let you have it under these conditions: One, that you protect our cost plus a return, and that we are able to work out the necessary limitations and conditions."

Now I don't think that is an unreasonable position. But they have never sat across the table from us to work out the details of the freedom they want to set rates.

We have a meeting scheduled for the 31st of August, maybe something can be done.

Now freedom to route traffic -- the airlines are in the express business. This is a pool. We need some kind

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35 certificated airport cities, really, where we would have to set up a comparable terminal and staff to what the express company now has.

Mr. de Voursney, speaking for the airlines at the hearing, stated that it probably would take us about six months to build up such an alternative. We have some studies on it, but nothing definitive. We hope we won't have to. We want to continue to do business with the express company.

MR. MINETTI: Just one further question.

Did I hear you say that in your opinion REA could survive without airfreight forwarder authority?

MR. BERNBARD: I asked their president at the hearing the question, if you had to choose between airfreight forwarder authority and engaging in the air express business with the airlines under the present type of agreement, assuming that we could come to terms on these technical points, which would you prefer?

And he said "Well, if we can come to terms on the airlines on the items we are concerned with," he would prefer to be in the air express business with the airlines than be an independent airfreight forwarder.

That is about all I could answer on that.

MR. MINETTI: Thank you very much.

MR. GILLILLAND: I take it when you speak about

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your requirement for cost-plus return on the charge that REA might make you are referring to fully allocated cost?

MR. BERNHARD: As in Mr. Mathews' case, I am not the attorney in the airfreight rate case. But it is my recollection that in principle, yes, thatthe airlines do not want to burden other forms of transportation such as passenger transportation or mail with the cost of providing air express service.

MR. GILLILLAND: I take it this other case has a pretty close relationship with this one.

Within my observation, however, in other cases, it has been apparent that various carriers, direct air carriers, have different methods of assigning costs to mail or to cargo. I am wondering whether that is true. Are all of your constituent air carriers, direct air carriers, in agreement as to what should be assigned and what should not be assigned in determining what the fully allocated costs of the carriers are?

MR. BERNHARD: I have worked on the brief and so forth in the rate case, I can answer it to a certain extent.

The airlines, the Bureau, the Air Freight Forwarder Association, and Examiner Shapiro are all very close in their determinations of how the airline costs should be handled and what the airline costs are in air express service. I think the airlines would accept the

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Bureau's findings in that case, although there are certain small items on which the airlines have taken exception, But in principle, we would be willing --

MR. GILLILLAND: You are speaking of the plural. I want to get at the singular -- how are they as between each other, the airlines.

MR. BERNHARD: On air express?

MR. GILLILLAND: On what items of cost.

MR. BERNHARD: Go into express?

MR. GILLILLAND: And in what proportions.

MR. BERNHARD: I am not aware of any dissension among the airlines with respect to the cost finding activities of Mr. Eichner, who made the study for the whole airline industry on air express. We studied the big and little ones, and there was no disagreement, as far as I know, on the formula used and the procedures. They are not different from those developed in your several cost cases that are going on now in passenger and freight and so forth. The principles are pretty much the same.

MR. GILLILLAND: I note that you assert with some confidence that REA made money on air express and lost it on surface express. I take it you know now with more precision than you once did about what the books of REA relate.

Am I correct on that?

MR. BERNHARD: Absolutely, it has been a revelation.

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MR. GILLILLAND: How do you know that they lost money on one and made money on another?

MR. BERNHARD: They told us.

MR. GILLILLAND: Don't their offices and trucks serve both types of traffic?

MR. BERNHARD: This is their own statement to us by their own financial people.

MR. GILLILLAND: That is their statement?

MR. BERNHARD: That is their statement.

MR. GILLILLAND: Do you know how they arrive at the division of the cost between the two?

MR. BERNHARD: I don't know. I can't say I know. I presume they use the same technique they used in the rate case.

MR. GILLILLAND: Do you know whether or not in making the allocations that they give any attention to receipts as a basis for justifying the allocations?

MR. BERNHARD: Sir, you are getting into deep water with me now. I can't answer that.

MR. GILLILLAND: I guess I am getting in deep water with myself. But this it seems to me to be -- this kind of intrigues me. Suppose that REA lost all its surface business. Then there wouldn't be any area of that kind to allocate any cost to.

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MR. BERNHARD: Nor would they be a partner we would

be interested in.

MR. GILLILLAND: That is the way I understood it. But it seems to me there must have to be some area of compromise here to get at the realities. It would be pretty hard to say that you lost money here and made money some place else when you have these cost factors to take into consideration.

I don't know how far you can stretch that.

On the matter of REA's interest in securing air-freight forwarder rights, I take it now that the rate that you haul direct air carriers, part of it you haul as a partner with REA Express and part of it you haul as air cargo, and that is all your business.

Don't these two methods compete to some extent?

MR. BERNHARD: That depends on the rate structure, of course. The airfreight rates are geared to minimums in the vicinity of 50 pounds. It is now $10 but it comes out about the same. If you take the $10 airfreight minimum and you add $6, pickup and delivery charges, you are way above the $9.38 minimum for air express.

I think the airlines have structured the two services in a way that makes air express the small shipment service of the airlines and makes airfreight their own larger shipment service. The average air express shipment is about 26 pounds I believe. The average airfreight shipment is 200 and

expedite traffic, would be set by unilateral action of each airline, just as air freight rates and passenger fares are and should be set. It would be available for shippers who themselves may want to perform or arrange for their own pick-up or delivery services or both, just as many do now, although they have to pay for it, whether used or not, because REA has a door-to-door tariff.

This high expedite tariff of the airlines could be used by forwarders as a special service who will offer their own rates to shippers under a special high expedite tariff, including pick-up and delivery.

And, of course, it can also be used by REA through its diversified, far-flung offices, as an air freight forwarder, because in its high expedite operation, it will compete on equal terms with the forwarders as it will compete with them in its air freight forwarder operations.

MR. MINETTI: Mr. Haffer, how would such a system affect the cost to the shipper?

MR. HAFFER: The cost will be based presumably upon what the airlines' costs are reflected in the airlines' own economics. This would have to be determined by the airlines themselves, and subject to review by the Board in an appropriate proceeding.

I haven't purported to cost it out, Mr. Minetti, but I assume it would be a cost based upon the realistic

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forwarders to use in competition with REA.

MR. MINETTI: If you eliminated REA, would the air freight forwarders provide the same service at the same rate?

MR. HAFFER: The airlines would have to -- if you want -- we say today that routine air freight of air freight forwarders gives the same delivery time in general that air express traffic, even with priority, now gives. We believe that the elapsed time studies verify this, and the Examiner in fact did not reach a contrary conclusion.

So what we say is that the routine air freight today moves on as expedited a basis as REA's air express traffic today. If today -- also forwarders may give extra special service to a particular kind of shippers. Forwarders today, for example, under their routine tariffs, will move tremendous numbers of radioactive isotopes. It was referred heretoday by Mr. Keenan as being an extraordinary kind of situation that only REA engages in.

This, of course, is not true, as the evidence of record will clearly verify. Many forwarders have tremendous volumes of high emergency, life-saving type freight which they move in their regular air freight forwarding operations. They relied upon the regular service of the air carrier, and their own particular techniques in routing traffic in the case of backlog.

Now, if there is a particular special situation

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where an extra high expedite kind of service is needed, a split-second type of service, or if the shipper feels that he needs some kind of extra service, he wants it to go out at once, or if for any reason he just decides to have it go out quickly, the high expedite tariff that I have referred to would take care of all of these extra emergency needs of the shipping public.

It would be available there, the shipper would never lose the opportunity of having this kind of service available to him if he needed it, and to be there.

What the price would be for that, it obviously would have to be costed out on the basis of the cost to the airline and the cost to the air freight forwarder. But the service would certainly be available. We say that service would be far superior to that which is presently given under air express because what we have said is, and we believe we have proven it, that the regular service of the air freight forwarder is at least equivalent in terms of speed as the present service of REA's air express service.

MR. MINETTI: Will the cost savings which the shipper now enjoys under REA -- will they be lost to him in elimination of REA?

MR. HAFFER: We think the airlines could reduce some of the air freight costs to the air freight forwarder to bring them down to a point where the existing air freight

forwarder under the airline tariff would be entitled to pretty close to the benefits that REA now obtains from the air express tariff.

MR. MINETTI: Was there anything in the record to that effect?

MR. HAFFER: I do not believe that the question really of cost was in this case. This is a matter I think that should be stressed, Mr. Minetti. The argument of the so-called economies of handling air express through a single ground agency in which all the administrative functions would be performed by a single company -- in my judgment, I don't think it was really an issue. It was not put into issue in this case by the Board, the question of what are the proper rates in this particular case, and how do they compare with the rates of airfreight and how should they compare with the rates of airfreight and that of airfreight forwarders.

Somewhere along the way, during the course of this case, the airlines argued that there were economies resulting from this central system which allow them to give lower rates below 50 pounds to REA and to the users of REA traffic. There is no verification for that in his record either, Mr. Minetti.

MR. MINETTI: There was a statement made this morning that there was a cost savings to the shippers of about $29 million. Was that in the record?

MR. HAFFER: No -- that is not in this record. All that will show, Mr. Examiner -- I think what Mr. Bernhard is citing is what the difference in rates are between rates

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ARGUMENT OF MR. RYAN, EMERY

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MR. MINETTI: Mr. Ryan, can Emery provide the same service as REA provides now at the same rate?

MR. RYAN: Emery can provide the same service in the sense of being able to pick up any shipment and see to it that it is delivered any place. Whether it can provide it at the same rate, we do not know. Whether it should provide it at the same rate, we do not know.

Counsel for the participating airlines this morning said that until the Board's decision, as I understand him, the rate was not compensatory for the airlines, the REA rate. If that is so, then Emery would do that as insupportable, that any rate for air express or any other air freight traffic should be compensatory, and should be raised to a compensatory level.

Now, certainly I would not commit Emery to providing service at the same rate at this point, first of all, because those rates are not available to Emery. They are rates privately negotiated between REA and the airlines, and not available to the public or any other outside shippers.

I am talking about the airline portion of that rate.

MR. MINETTI: Fine. Thank you.

MR.RYAN: Going on with the question of geographic coverage now, I would like to point out that that coverage by airlines and by indirect carriers has been expanding rapidly and

largely. The board, over the years, and since the original inception of REA, has certificated carriers to more and more points.

More importantly, it has authorized air freight forwarders to come into being and to expand their operations, and many air freight forwarders have done exactly that.

At the moment, for example, Emery maintains 66 airport facilities of its own as compared to only 37 exclusive REA air express offices.

Finally on the matter of rates, Mr. Bernhard made some comment this morning in which he suggested that the minimum rates available from direct carriers and from forwarders were vastly in excess of those from REA. It is my understanding, and this has been checked by Emery just now, that prior to the minimum rate order, the minimum rate between New York and Los Angeles, as an example, was $21.50, in the case of airlines, $8.50 in the case of REA, and $7.47 in the case of Emery.

The minimum rate order reduced the airline rate to $10. The REA, by virtue of the $1 increase, has gone up to $9.50, but the REA -- the Emery minimum rate is still $7.47.

I would conclude, since my time is about up, by saying that again, Emery looks toward a solution for REA's problem, but that problem continues intense and great, and we think that solution is to give air freight forwarder rights to

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REA.

Although we think the Board should do that, it is vital, however, that no joint and dual certification rights as a forwarder and as an express carrier should be permitted, because the result would be unfair competitive advantage.

MR. MINETTI: Mr. Ryan, there was an allegation made this morning of the cost savings to the shipper under the air express agreement. Do you have any comments to make on that?

MR. RYAN: There are indeed some markets in which the shipper pays less money if he uses REA than if he uses the airline, or if he uses an air freight forwarder. That is correct.

And if that is what you mean by cost savings, I would grant you that it is so.

The question, however, is whether that is valid costing which results in the cost saving. The question is: Do the airlines make their expenses and a reasonable rate of return? That is not an issue in this case, and therefore we don't know.

MR. MINETTI: Just one other question. I take it that you see no justification at all for the REA type service?

MR. RYAN: There may be. It is possible that the Board could decide, and Emery has offered this as a possible

it comes down to this, REA is chosen over other forwarders strictly on the basis of lower rates.

MR. MINETTI: Do you feel that the airfreight fowarders can provide the same rate REA is providing now?

MR. BLUM: Again, the costing of REA's rate was not examined in this proceeding, or of the express rate. Therefore, we did not or the Bureau could not make a determination wehther the airfreight forwarders would be in a position to offer service at these rates.

However, as we think is obvious from the proceeding, the airlines have maintained these rates at a low level over the objections of REA, and REA's position is that these minimum rates are not covering REA's costs. Therefore, I suppose it leads to the conclusion that obviously these rates would -- if the monopoly system were terminated, these rates would probably be increased, but I can't tell you to what extent or how much.

But, on the other hand, they would be competitive then, and it would not be set by the airlines and would not be a monopoly system, and in teh area of competition, we feel that the rates would reach their own level, based on cost.

MR. MINETTI: Does the Bureau have any comments on the allegations of cost savings to the shippers under the air express agreement?

MR. BLUM: Yes, sir, we do. As we have stated in

REBUTTAL ARGUMENT OF MR. BERNHARD, PARTICIPATING AIRLINES

* * *

The rate structure is a little bit higher than the present rate structure, a matter of cents, not dollars -- a matter of cents higher, but those cents are sufficient to make up the $12 million or $14 million loss of the airlines, considering the total number of shipments, and are at least 50 percent below the forwarder level of rates, even though they are fully compensatory on a fully allocated cost basis for both the express company and the airlines.

Thank you.

MR. GILLILLAND: I just have one question.

Wouldn't an airport-to-airport rate tend to force up the present rates?

MR. BERNHARD: Yes, sir, it would to some extent, for the reason that something in the vicinity of 30 percent of the air express shipments today are not receiving pick-up or delivery service.

Now those shippers would, of course -- who are now bringing their shipments to the airport, would get the benefit of the lower airport-to-airport rate.

We would have to compensate REA. It wouldn't affect the airlines because they would be still hauling airport to airport. But we would have to compensate REA for the loss of some revenue which they were getting in their pick-up and delivery end, which means that those shipments would have to be somewhat higher. How much, we didn't know

EXAMINER SHAPIRO: All right.

MR. ROSENBERG: We have not received them, sir. Thank you.

EXAMINER SHAPIRO: Any other appearances?

Yesterday I received a motion filed by REA to have the participating airlines submit in this proceeding a priority study which is being performed in the Express Service Investigation, Docket 22388. Have the parties received copies of that motion and are they familiar with it?

MR. BERNHARD: The airlines have received it.

EXAMINER SHAPIRO: Well, Mr. Wolff: would you please make the motion orally so that the parties can understand what is involved here?

MR. WOLFF: Yes, sir. I'll read the text that was served by mail yesterday and filed yesterday before.

"Motion of REA Express to include Priority Study: REA Express, Inc., hereby moves the Examiner to order that the participating airlines in this proceeding submit for the record in this case the priority study which the airlines have been directed to perform in the Express Service Investigation, Docket 22388. A key element in the Airline/Air Express Company's exhibits presented in this proceeding by both the Bureau of Economics and the participating carrier is the priority weighting attached to air express. The question of the practical application of priority to air express traffic

thus has considerable importance for the record in this case. In the Express Service Investigation, Docket 22388, the airlines will supply the following information for six trunk carriers and six local serice carriers: "For the fourth week in March, 1971"" -- This is a quotation from the supplemental pre-hearing conference report of Examiner Keith, in Docket 22388. "'For the fourth week in March, 1971, the total number of scheduled passenger flights by departure time and city pair for each 24-hour day, which departed without capacity to carry cargo in addition to that on board the aircraft.' This study should also be made a matter of record in this proceeding for the prupose of evaluating the priority feature of air express to which such great importance has been assigned by the Airlines Bureau. Since the study is already being performed by the airlines in Docket 22388, it will require scant additional effort for the carriers to present the results and a sponsoring witness in this proceeding. No substantial delay should result from the inclusion of the study in this case because the survey is planned for the week of March 22nd. At most it may be necessary to set an additional few hours of hearing after the close of the hearing on the rest of the evidence in this case. This need not result in any delay in the procedural dates for hearing."

And, briefly, for the reasons stated above, REA Express, Inc., respectfully requests that the Examiner order

the participating airlines ro present the result to the priority study being performed in Docket 22388, together with a sponsoring witness for the record in this proceeding.

EXAMINER SHAPIRO: Now, when is this material to be submitted on Docket 22388? What is the date?

MR. BERNHARD: May I address myself to that, Mr. Examiner?

EXAMINER SHAPIRO: The date?

MR. BERNHARD: Yes, sir.

Examiner Keith ruled specifically that this survey would not be an Information Response but would be submitted as evidence by the airlines. The study is not due until May 28th, and we don't have any intention of preparing it before that time, because the persons who would prepare the study from the raw data are persons who are witnesses in this case and have no time to devoteto the Air Express Investigation proceeding. The exhibit will not be readied before the date ordered by Examiner Keith, May 28th.

EXAMINER SHAPIRO: Is there any objection, then, to the motion? Do the parties have any?

MR. BERNHARD: Yes. We object to the motion for two reasons. First, REA had adequate opportunity to make this same request at the appropriate time in this proceeding. Secondly, there would have to be a substantial delay in the hearing of this proceeding because that information will not be

available until May 28th. I don't see how we can comply to the circumstances. I don't think we should be required to comply.

EXAMINER SHAPIRO: Mr. Meiser.

MR. MEISER: Mr. Examiner, if this information could come in without delaying this hearing, we would have no objection; however, if that is impractical, we would defer to the airlines on this, of course. We would object to holding up this proceeding to wait on that.

EXAMINER SHAPIRO: Very well. Any other comment?

MR. RADCLIFFE: The Bureau would like to suggest perhaps the raw data could be made available as early as possible in an unsponsored form. We could act as custodians. They could be mailed for examination by any parties who are interested.

MR. WERTHEIM: Mr. Examiner?

EXAMINER SHAPIRO: Yes.

MR. WERTHEIM: The Flying Tiger Lines view -- anyone who contends that some priority weightings should be provided, the Flying Tiger Lines feel the burden is upon that party or parties to show evidence justifying it, and if such evidence isn't available, that would go to the weight of any contention that such weightings are to be used. The lack of availability of this priority study at the present time, whatever the value of that study might be, is in our view an illustration of the great lack of a lot of data at this time.

If REA, which is a party with the apparent financial need for early action on its rate proposal, is prepared to await the results of this study, then Flying Tiger certainly would have no objection to awaiting the results of that study. It is certainly difficult in this record to cope with the question of priority weightings if there is no priority data available.

EXAMINER SHAPIRO: Well, when I received this motion I thought there might be some possibility of avoiding delay if the material was to be ready as an Information Response, which would have been the latter part of April, I believe, and I was going to defer ruling to see how much delay would be involved in receiving this material, but in view of the fact it's not going to be ready until the end of May, it's clear to me that there would be unnecessary delay.

MR. WOLFE: Mr. Examiner, may I be heard for a moment on that point?

EXAMINER SHAPIRO: Yes.

MR. WOLFE: The airlines has simply said that under the present schedule in Docket 22388 this material is due on May 28th, and if they are not going to take the trouble to make a little extra effort to get this material finished and available prior to May 28th -- no one I've heard this morning has disputed the importance of this issue in this proceeding. I think everyone recognizes how important it is, and I am in agreement,in general,with Flying Tiger's remarks about burden,

but this is information that is peculiarlarly and exclusively in the possession of the airlines. REA has no way to get it in the record. I think the Examiner should ask the airlines to exert themselves and cooperate and try to supply this in a form that would be usable to this proceeding prior to May 28th so that we could serve both the ends of rapid hearing of this case and inclusion of the date. They are not mutually exclusive. It's only because the airlines make them so.

MR. BERNHARD: Mr. Examiner, the survey we are conducting, involving American, United, Delta, Continental, Allegheny, Frontier and Northeast Airlines at every station and every flight for a solid week there will be literally thousands of pieces of paper that we have to audit for accuracy in compliance with instructions. We will have to correlate them and probably computerize them, and the persons who are going to do that work are the persons who are the witnesses in this case, and we simply do not have the time to handle all that tremendous amount of data that's been requested and submit it in this proceeding. And we don't intend to put in raw data unless the persons who have prepared the raw data have compiled with the instructions, and that can only be determined by auditing each of the pieces of paper.

EXAMINER SHAPIRO: Well, are you suggesting that it is not physically possible to present this material in a final form by the time the Information Responses are due in the

other case?

MR. BERNHARD: That is exactly why Examiner Keith ruled it would not be required as an Information Response but would be submitted as evidence by the airlines, and the pre-hearing conference report specifically so states.

EXAMINER SHAPIRO: Well, it is very late in the day, Mr. Wolfe, you understand, to be making a request of this kind, and we never had an opportunity even to consider this study in this case, that is, as to whether it would be available or how it could be made available.

MR. MARTIN: Mr. Examiner, may I speak to that for just one second?

At the time that we made our request for information, or our information request, we just frankly had no idea that three of the major people putting in force in this case were going to adopt some previous Board decisions in which Express was never even represented, and now we have from Bureau Counsel, from participating carriers and from AFFA a grandiose adaption of the priorities which were set up in mail cases in which the mail people and the airlines and Bureau Counsel and the CAB decided that this is the way to assess express, but, of course, noboody there was representing express. I don't think we were really -- we really had no idea -- at least, I had no idea. I don't see how anybody could have an idea that this would be sort of accepted as dogma now.

by three people and we have buck it
We think it doesn't mean anything. That's our position in the case, and we are sure it doesn't mean anything, and, of course, we don't have any proof __ if the Tiger man is right abou t the burden of proof, fine, but we don't see any proof that priority means anything as far as costs are concerned. But if we are going to be prejudiced by the existing dogma of these mail cases, then I think the studies really should be in.

EXAMINER SHAPIRO: Well, it's a question on the burden of proof. I'm inclined to think, without having considered this specific question before this, that the burden of proof would be on those who are proposing to rely on that doctrine. On the other hand, you are quite right, there are several cases now in which the word has expressed itself on this subject, so you would have to equate their burden of proof with the weight of the Board's decision and make that determination for yourself as to just exactly how much of a burden of proof they really have.

I think we can conclude this now.

This is an untimely request given the circumstances in which this study was to be developed. It will necessarily lead to a further proceeding here and I don't think that we are in a position to get into further proceedings. I've tried to avoid that in prior rulings.

I will deny the motion.